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# Procedural Justice for Youth: Discrepancies in the Provision of Defense Counsel for Youth in the Juvenile Justice System

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PROCEDURAL JUSTICE FOR YOUTH: DISCREPANCIES IN THE PROVISION OF  
DEFENSE COUNSEL FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM

by

EMILY PELLETIER

A dissertation submitted to the Graduate Faculty in Criminal Justice in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

2017



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This manuscript has been read and accepted for the Graduate Faculty in  
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## ABSTRACT

Procedural Justice for Youth: Discrepancies in the Provision of Defense Counsel for Youth in the Juvenile Justice System

by

Emily Pelletier

Advisor: Jeremy Porter

Youth in the juvenile justice system experience racially disparate outcomes at all contact points throughout the system process, despite race-neutral state policies governing the juvenile justice system. States provide defense counsel for indigent youth in the juvenile justice system through policies containing race-neutral language; however, each state maintains different policies protecting youth rights to defense counsel. This study questions the relationships among state policies protecting youth rights to defense counsel, racially disparate outcomes for youth in the juvenile justice system, and state socioeconomic and racial composition. The study relies on content analysis to transform qualitative state policies into quantitative data suitable for quantitative analysis. As identified through statistical analysis, the study results indicate some consistent patterns emerge between the state policies protecting defense counsel for youth and racially-disparate outcomes.

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## **Introduction**

The juvenile justice system has a long-standing history of disparately impacting youth of lower-socioeconomic status and minority racial/ethnic groups. In recent decades, research and policies have focused on the disproportionate manner in which the juvenile justice system processes and punishes non-White youth at all decision-making points. The disparate outcomes for non-White youth indicate potential racial disparity in the implementation of policies governing the juvenile justice system. These policies appear race-neutral on their face but result in disparate outcomes. Acknowledging racial disparity in the juvenile justice system, the federal government initially approached the topic in the Juvenile Justice Delinquency Prevention Act through a core mandate that requires states to address disproportionate minority confinement. This core mandate has since expanded to address disproportionate minority contact, recognizing the problem extends beyond confinement (Office of Juvenile Justice Delinquency Prevention 2009; 42 U.S.C. 5602 (2002)).

Policies structuring the juvenile justice system mandate most legal decision-making authority to the prosecutor, judge, and the defendant through defense counsel representation. In the adversarial juvenile delinquency court, which also seeks to rehabilitate youth, the prosecutor represents the state and the need to maintain public safety, while the defense attorney upholds the rights of the defendant. The defense attorney bears a significant role in the juvenile justice system, and this role may contain opportunities to mitigate racially disparate outcomes.

Defense attorneys in juvenile court protect youth's due process rights and provide a check on the state's police, prosecutorial, and correctional power, thus ensuring individual liberties do not fall victim to unyielding state power. Defense counsel has the opportunity to review and challenge decisions made by the state throughout the process, from arrest to

placement in secure confinement. The ability to review prior justice-system decisions and advocate for future decisions allows defense attorneys to uphold youth due process rights and monitor state discretionary power.

Access to the protections of defense counsel differs for youth based on geographical and socioeconomic factors. Research indicates that indigent youth have restricted access to quality defense counsel in juvenile delinquency courts due to local practices and policies that limit, or lack explicit direction on, the waiver, appointment, retention, and role of defense attorneys provided to indigent youth. Although these defense-related policies appear race-neutral, they may have a disparate impact on groups of racially and ethnically non-White youth because these youths enter the juvenile justice system at high rates. As a result, a systemic lack of defense counsel representation for youth in delinquency courts systematically reduces the due process protections for youth, contributing to racial and ethnic disparity.

The juvenile justice system has a history of operating under policies written in race-neutral language but impacting youth in a racially and ethnically disparate manner. Historically, the juvenile justice system has developed through policies that appear race-neutral based on their text, but when implemented have a disparate impact on youth of lower-socioeconomic status, immigrant youth, and youth from non-White racial/ethnic groups (Platt, 1969; Ward, 2012; Alexander, 2012). The development of juvenile justice system policies that appear neutral to societal differences, but systematically create disparate outcomes for groups of youth labeled “other” by society, follow the trajectory established during modernity with the rise of the state. This trajectory encompasses the manner in which the groups in power – the landowning Whites – create and use the concept of race to maintain power and control over those who seemingly

threaten homogeneity; this conceptualization and form of control manifests in laws that appear race neutral but have racially-disparate impacts (see Goldberg, 2002; Platt, 1969; Ward, 2012).

Critical theorists highlight the rise of the juvenile justice system in the late 1800s and early 1900s as a mechanism of formal social control specifically for youth from lower socioeconomic and immigrant families (Platt, 1969). The juvenile justice system excluded Black youth for many decades, punishing them with the convict-lease system or in adult criminal courts (Ward, 2012). With the rise of the civil rights era in the 1960s, Black youth entered into the juvenile justice system at disproportionately high rates, receiving disproportionately severe sentences (Ward, 2012). As this trend continues in juvenile and criminal justice systems, critical theorists emphasize the use of the justice systems to maintain power over non-White groups (Alexander, 2012).

Defense counsel maintains an important check on the power of the state exercised throughout the justice systems as a mechanism to ensure state power does not usurp individual liberties. Research on indigent juvenile defense indicates a systemic lack of quality counsel for youth of lower socioeconomic status, who cannot afford counsel and are often of a non-White race/ethnicity (in particular Black, Latino, Native American, and Southeast Asian) due to the high rates of non-White youth processed by the juvenile justice system (National Juvenile Defender Center 2012; Feld 2010; see Haywood Burns Institute). Studies further explicate this finding through the identification of limitations to indigent juvenile defense practices. These include, but are not limited to, late appointment of counsel, role confusion, waiver of counsel, presumption of indigence, post-disposition/appeal representation, and limitations of review for transfer to adult court (National Juvenile Defender Center 2012; Puritz et al. 1995). Although these limitations occur across the United States, states vary with regard to the statutory provision

of indigent defense counsel. Some state laws encompass some or all of the specific defense provisions; while other states provide only broad legislation on the right to defense counsel in delinquency court.

Statutes, court rules, and case law regarding defense counsel maintains race-neutral language, but these legal policies disparately impact non-White and lower socioeconomic status youth (see National Juvenile Defender Center 2012; National Juvenile Defender Center 2012b; Haywood Burns Institute; Office of Juvenile Justice and Delinquency Prevention, 2009). As a result, statutory provisions for defense counsel become important mechanisms for prohibiting overarching state power that may contribute to an unjust use of the juvenile justice system as a mechanism of maintaining the status quo of the power structure. This pattern – the use of laws that seem race-neutral on their face but have a disparate impact and maintain the power structures in society – appears in several areas of law and throughout criminal justice. Prior studies find significant relationships between an increase in the presence of racially/ethnically non-White groups in a community and formal social control of non-White and lower socioeconomic groups; the criminal justice system serves as the mechanism to administer the forms of social control – such as increased police resources, more arrests, and harsher sentences.

This study connects the prior research findings to determine whether the seemingly race-neutral laws on the provision of defense counsel in delinquency court have a significant association with the socioeconomic and racial composition of a state. More specifically, this study questions whether the policies providing defense counsel promote or restrict due process protection for youth in relationship to the demographic composition of the state. The general guiding research question for the study asks: Do states with larger proportions of lower

socioeconomic and non-White persons have policies that limit access to and the role of defense counsel in the juvenile justice system?

The study relies on qualitative and quantitative data to answer the research questions. Qualitative state statutes, court rules, and case law inform the researcher of common trends in the provision of juvenile defense counsel in across the United States. A content analysis process determines a quantitative score for each state regarding is policy protections for defense counsel representation and subsequently youth due process protections. Using U.S. census data on race, ethnicity, and socioeconomic status, quantitative analysis determines whether statistically significant relationships among the percent of non-White and lower socioeconomic groups in each state, the disparate outcomes, and the state laws governing provision of due process to youth in delinquency courts.

This study seeks to assist researchers and policy-makers in addressing disproportionate minority contact in state juvenile delinquency courts through protections for defense counsel representation. It also seeks to contribute to policy conversation regarding the disproportionate minority contact core provision of the Juvenile Justice Delinquency Prevention Act. While disparate outcomes for youth in the juvenile justice system presents a complex and multi-systemic problem, understanding the role of defense counsel in mitigating racially disparate outcomes at a systemic level may contribute to a decrease in disproportionate minority contact within the juvenile justice system.

## **Theoretical Framework: Due Process, Race, and the State**

This study derives from critical race theory, which identifies the role of the State in maintaining the power of a racially hegemonic society through laws that facially appear race-neutral but have a negative disparate impact on minority races. Scholars have tracked this maintenance of hegemonic power at the expense of a racially heterogenic minority to the rise of modernity, beginning in the 1500s. The concepts of race and disparate outcomes for non-Whites that emerged during modernity parallel the racial disparities in the present criminal and juvenile justice system. The laws governing the juvenile justice system appear racially-neutral; however, non-White youth experience disparate outcomes at every contact point of the juvenile justice system.

Using the framework identified by David Theo Goldberg (2002), and supported by other critical race theory scholars, this study examines “The Racial State” framework in relationship to juvenile justice. As asserted by some scholars, the juvenile justice system can function as a social control mechanism for youth of lower socioeconomic status and non-White youth (Platt, 1969; Ward, 2012), with defense counsel policies as a protection for youth against overreaching state power. Although the defense counsel policies appear race-neutral on their face, they have a disparate impact on non-White youth due to high rates of disproportionate minority contact across the juvenile justice system. These policies can protect the due process rights of youth or limit the protection of due process rights, depending on the access to representation these policies grant. The disparate rate of non-White youth in the juvenile justice system means juvenile defense policies have a disparate impact on non-White youth. The Racial State theoretical framework – supported by the application of critical theory to the impact of the juvenile justice system on youth of lower socioeconomic status prior to 1970, and the application

of critical race theory to the impact of the juvenile justice system on Black youth – forms the foundation for exploring the relationship among population demographics, disparate non-White youth contact with the juvenile justice system, and defense counsel policies.

Defense counsel policies uphold the youth’s Constitutional right to due process through the 14<sup>th</sup> Amendment. The United States Constitution provides due process to restrain unyielding state power to take away individual and group liberties. Critical theorists recognize that state power tends to maintain the current power structures in place and leans towards populous homogeneity rather than heterogeneity. With the rise of the modern state in the fifteenth century, this tendency emerges for the first time as the creation of the concept of race and the reinforcement of structural dominance over non-Whites, by the Whites who held society’s power (Goldberg 2002; Essed and Goldberg, 2002). The power structures of the modern State, specifically the United States, reflect the modern State conceptualizations of race and maintenance of current power structures.

### **The Racial State, Colorblind Rhetoric, and “Race-Neutral” Laws**

The concept of racism and the “othering” of people based on race developed with rise of modernity. As transportation and communication developed with the breakdown of feudalism, the rise of the modern state brought with it a fear of power loss and high value placed on homogeneity beginning in the fifteenth century (Goldberg, 2002). Race became a concept to define others and a mechanism for crisis management and containment of threats to homogeneity (Goldberg, 2002). Scholar David Theo Goldberg (2002) traces two primary lines of race-based thought through the rise of modernity: naturalism and historicism. Naturalism characterizes people of non-White races as “others” who have a biological difference that justify exclusion,

enslavement, and extortion (Goldberg, 2002). Historicism relies on a portrayal of non-White races as culturally immature (Goldberg, 2002).

As noted by Goldberg, the predominate philosophers during the rise of modernity – Hobbes and Locke – reflect the perceptions of naturalism and historicism in their writings. Hobbes frames race as a conception of a natural, native condition incapable of developmental or historical progress (Goldberg, 2002 citing Hobbes 1651/1968). The “State of Nature” fixes racial characteristics inherent to groups of people, justifying the rise of the modern state ruled by the rational capability of Europeans (and colonizers) who progressed beyond an original natural state (Goldberg, 2002). Locke presents an agency-based argument for the modern state dominance over people of non-White races (Goldberg, 2002 citing Locke 1689/1960). Locke asserts non-White races as capable of, but also dismissive of, organizing themselves into a productive nation-state (Goldberg, 2002 citing Locke 1689/1960). Framed as having the agency to reject nation-state organization, the enslavement of non-Whites becomes a colonized outcome of a “just war” (Goldberg 2002). Building on the philosophies of Hobbes and Locke, Kant furthers the exclusion of non-Whites from the nation-state by explicitly stating that citizens of the state must be “their own masters,” excluding those who are not White, male, property owners (Goldberg, 2002 citing Kant 1775/1950). These philosophers demonstrate the societal creation of race as a method of excluding groups of people from the rights and protections of the nation-state (Goldberg, 2002).

The law deriving from the rise of modernity contains the naturalist and historicist frameworks. Naturalist thought lineage creates laws repressing groups by race, and historicist thought lineage produces laws governing groups by race (Goldberg, 2002). Most often lacking explicitly language referencing race, laws appear neutral at face value but have the effect of disparately repressing groups by race and promoting group interests of Whites (Goldberg, 2002;



Alexander, 2012; see *United States v. Carolene Products Co.*, 1938). The modern state operates through the creation and enforcement of laws, and scholars assert that capitalist states focus on laws governing three areas of society, all of which govern race at their core: 1) migration and immigration, 2) social interaction and 3) crime control (Goldberg, 2002: 102). Through law, the state establishes institutions and governs social relations, which reflect racial conceptions, exclusions, and forms of repression (Goldberg, 2002). State regulations surrounding “criminalization, taxation, retirement, death, burial, and inheritance formalities” shape societal advantages and disadvantages through the silent routinization of race (Goldberg, 2002: 117).

Michelle Alexander (2012) further speaks to the impact of criminal justice laws silent on race but disparately impacting people of racial and ethnic groups. Alexander chronicles US policies from the founding of the United States through the present day that present race-neutral language but allow for oppression, discrimination, and formal social control of non-White people. Beginning with the Constitution, which does not use race-based language but allowed for the institution of slavery; through Jim Crow Era policies written in race-neutral language but allowed for racially discriminatory practices; to the current era of mass incarceration in the United States, Alexander demonstrates how U.S. policies attempt to preserve the power structures in the US established by property-owning White men through race-neutral language (Alexander, 2012). Alexander argues that race-neutral and “colorblind” language reduces the ability of citizens to recognize the disparate racial impact of laws and to advocate for change (Alexander, 2012).

The modern state generally, and the United States specifically, most often articulates its laws in race-neutral, abstract language; however, lack of reference to race serves to deprive people of rights and privileges silently (Goldberg, 2002). Legal language of the modern state

asserts rational positivism that generalizes and abstracts law (Goldberg, 2002; Essed and Goldberg, 2002). The generalizations and abstractions create the appearance of neutrality, uniformity, and systematic application of the law, regardless of the conditions or status of individuals and groups (Goldberg, 2002). Promoting the constitution of society as hegemonic (the modern state's ideal) law's "impartiality help[s] to paper over deep contrasts and divisions across space, place, people, and classes" (Goldberg, 2002: 140). The abstraction of law codes and race-neutral language create a legal environment in which "colorblindness" distracts from acknowledging the racially disparate impact of the justice system (Goldberg, 2002; Essed and Goldberg, 2002; Alexander 2012).

The race-neutral language of law hides law's support and continuance of the power structure imposed through the "othering" of non-White groups in the promotion of hegemony in the modern state. Further, the racially neutral language justifies law's disparate impact according to race (Goldberg, 2002; Essed and Goldberg, 2002). Unexposed in legal language, racial exclusion from rights and power becomes an unaddressed and unrecognized vehicle for "structurally marking opportunities and access, patterns of income and wealth, privilege and relative power" (Essed and Goldberg, 2002: 4). The conceptualization and definition of race that arose with the creation of the modern state permeates the modern legal system, unexposed by race-neutral language, perpetuating an idolization of hegemony and the power structure supporting Whites (Goldberg, 2002).

The juvenile justice system generally, and the provision of defense counsel specifically, demonstrate the racially disparate outcomes as a result of race-neutral statutes, court rules, and case law language. As representatives for the state and public safety, police and prosecutors arrest and charge youth in the juvenile justice system under the dual premise of rehabilitation and

accountability. Defense counsel in juvenile court upholds the due process rights of youth and advocates to the judge the expressed interest of the youth during the court process. Due process rights provide a limit to state power by requiring the state to meet its legal burdens and maintain. Recognizing state power as perpetuating status quo hegemony and power structure, due process limits the modern state's idolization of hegemonic power.

## **Due Process**

The Fourteenth Amendment of the United States Constitution states no State shall “deprive any person of life, liberty, or property, without due process of law” (U.S. Const. amend. XIV, §1). Due process has come to encompass both procedural due process and substantive due process. In American jurisprudence, it serves as a cornerstone for justice in civil, criminal, and administrative areas of law. Procedural due process dictates the necessity of actions/steps the government must follow before limiting the rights and freedoms of an individual or group. Prescribing the series of actions/steps the government must follow limits the ability of the state to make unjust or arbitrary deprivations of life, liberty, or property. Procedural due process increases the likeliness of a fair outcome and, in some instances, becomes a method of establishing justice in and of itself (Rawls 1971).

While the juvenile justice system maintains the goal of rehabilitation, youth face harsh consequences and deprivations of liberty when adjudicated delinquent. The harsh consequences and deprivations of liberty prompted the Supreme Court to provide youth the right to defense counsel through the Due Process Clause of the 14th Amendment. This provision differs from the adult Constitutional right to defense counsel in criminal court through the Sixth Amendment and *Gideon v. Wainwright*. The U.S. Supreme Court maintains that delinquency court differs in its

foundational doctrine and goals of rehabilitation from adult criminal court; however, youth still require due process protections in the form of counsel, even without the application of the Sixth Amendment to delinquency court (*In re Gault*, 1967).

While the U.S. Supreme Court established the right to defense counsel, state legislatures have the autonomy to pass state-specific laws regarding the provision of defense counsel. As a result, state codes, regulatory laws, and case law differ in the provision of defense counsel for youth. Some states explicitly identify the procedural contact point for the appointment of counsel, the presumption of indigence for the defendant, the role of counsel, and the length of representation. Other states provide a general, non-specific right to counsel. Although courts and attorneys may extend representation beyond the minimums provided by state statute, stark state policies may restrict uniform access to defense counsel.

As examples from two states, and as presented by the National Juvenile Defender Center database,<sup>1</sup>

“In Nevada, youth in juvenile court have the right to counsel “at all stages of the proceedings” and “the court shall advise the child and the parent or guardian of the child” of this right. Nev. Rev. Stat. § 62D.030(1). The summons served with a petition shall include notice “of the child of the child’s right to be represented by an attorney at the initial hearing.” Nev. Rev. Stat. § 62C.300(1)(b).”

“In Connecticut, youth in juvenile court have the right to counsel:

- Upon a determination of indigence and before a juvenile’s first appearance in court on a delinquency matter, a public defender must be authorized to represent a juvenile, until the court appoints counsel. Conn. Gen. Stat. § 51-296(d).
- At the commencement at any proceeding concerning the alleged delinquency of a child...the child shall have the right to counsel and be so informed by the judge, and if the child and parents are unable to afford counsel, that counsel will be provided for them. Conn. Gen. Stat. § 46b-135(A).
- “Whenever a request for a competency examination is under consideration by the court, the child or youth shall be represented by counsel in accordance with the provisions of sections 46b-135 and 46b-136.” Conn. Gen. Stat. § 46b-128a(b).”

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<sup>1</sup> Retrieved from: <http://njdc.info/practice-policy-resources/state-profiles/>

As protectors of youth due process rights in delinquency court, restricted access to defense counsel thereby limits the due process protections for youth (National Juvenile Defender Center, 2012). Defense counsel maintains the responsibility of ensuring the state meets its burdens of proof in establishing guilt without violating the Constitutional rights of the youth. Defense counsel appointed at early contact of the youth with the juvenile justice system may advise the youth of his or her rights throughout the process, including protecting youth rights during contact with police, courts, and corrections. Restrictions on the appointment of counsel, resulting from the silence of state policies on juvenile defense counsel, risk depriving youth of due process protections (Puritz et al., 1995).

State statutes, regulatory codes, case law, court rules, and non-regulatory guidelines on defense counsel in delinquency court appear race-neutral on their face. Although these policies may not directly operate through race-based decisions, the juvenile justice system provides a mechanism for social control by the state over groups perceived to threaten the status quo of those who hold the power in society and the desire to maintain a homogeneous society. As detailed below, the provision of due process through juvenile defense attorneys limits and reviews state power and discretionary or arbitrary decision-making. The policies that govern the provision of defense counsel have a significant impact on the access youth in delinquency court have to defense counsel, and as a result, these policies shape the availability of due process protections for youth, most of whom are from non-White racial/ethnic groups and lower of lower socioeconomic status.

### *Defense Counsel: Protectors of Due Process in the Juvenile Justice System*

The traditional view of the juvenile court establishes that the began in the late 1800s to provide rehabilitation for youth who engaged in delinquent behavior (Feld and Bishop 2011;

Platt 1969). Throughout the years, juvenile delinquency court has maintained the language of rehabilitating youth and balancing the best interests of youth with public safety of the community. Although criticism of the juvenile delinquency court demonstrates the use of the delinquency court as a formal social control mechanism for youth in non-White racial/ethnic and lower socioeconomic groups, most state juvenile justice codes cite rehabilitation as the central purpose of the juvenile justice system (Platt 1969; Ward 2012). Until the late 1960s, US delinquency court lacked an adversarial system and due process protections, based on the (later-established faulty) perceptions that due process contradicts rehabilitation and youth did not experience significant deprivations of liberty when adjudicated delinquent.

In the late 1960s, immediately following the “Warren Court Due Process Revolution,” the United States Supreme Court granted youth in delinquency due process protections through the 14th Amendment’s Due Process Clause (Puritz, 1995). In addition to finding expansive criminal procedure protections for defendants (*Brady v. Maryland*, *Mapp v. Ohio*, *Miranda v. Arizona*, *Escobedo v. Illinois*, *Gideon v. Wainwright*, *Katz v. United States*, *Terry v. Ohio*), the US Supreme Court granted youth due process protections in three court cases, *Kent* (1966), *Gault* (1967), and *Winship* (1970). These three Supreme Court cases established the requirement of due process in delinquency court and in transfers to adult court, despite the *parens patriae* doctrine guiding the juvenile justice system. The due process requirements established the right to defense counsel, notification of charges, cross examination of witnesses, right against self incrimination, and the burden of proof for the state as beyond a reasonable doubt in juvenile delinquency courts (*Kent v. United States* 1966; *In re Gault* 1967; *In re Winship* 1970).

In *Kent*, the court granted youth in delinquency court the right to full investigative inquiry, reasoning the “social welfare philosophy of the juvenile court “is not an invitation to

procedural arbitrariness” (*Kent v. United States*, 1966). *Kent* serves as a foundation for the right to counsel in *Gault* by discussing the need for counsel during waiver to adult court and need for procedural protections despite the rehabilitative goals of the juvenile court. The language of the *Kent* decision set the precedent for the *Gault* decision to determine that youth had a right to due process base on the authority of juvenile delinquency courts to deprive youth of liberty through harsh punishments (*Kent v. United States*, 1966).

In the 1960s, the United State Supreme Court recognized the failure of the juvenile court to uphold the rehabilitative ideal and noted the punitive nature of the juvenile court. The Warren Court and Court opinions that immediately followed highlighted the prevalence of wrongful convictions, judicial arbitrariness, discriminatory decisions, and general abuses of power in juvenile courts (Markman 2007; Feld and Bishop 2011). In response, the Court instituted procedural safeguards for youth in juvenile court, which established an adversarial procedural framework for juvenile court. Central to the procedural safeguards, the US Supreme Court upheld a juvenile’s right to a defense attorney in the 1967 case, *In re Gault*.

In the *Gault* case, the police arrested and detained fifteen-year-old Jerry Gault for making lewd telephone calls to a teacher. The police did not notify Gault’s parents and did not serve Gault or his parents with a petition. The juvenile court hearing did not include any procedural safeguards, such as the creation of a record, and the juvenile court relied on conflicting evidence to sentence Gault to six years in a juvenile detention hall. On appeal, the U.S. Supreme Court found the right to procedural safeguards, specifically the right to defense counsel, in the Due Process Clause of the 14<sup>th</sup> Amendment. The Supreme Court cited the increasing similarities between juvenile court and adult court, specifically the deprivation of liberty that results from a juvenile disposition and the punitive nature of the juvenile court, as reasons for invoking the Due

Process Clause of the 14<sup>th</sup> Amendment (*In re Gault*, 1967). In the discussion of the right to counsel, the Court raises concerns regarding the lack of voice the child has in the proceedings when a child does not have defense counsel, clarifies the roles of the judge and the probation officer as not being representatives for the interests of the child (creating a unique and separate representative role of defense counsel), and asserts the need for defense representation of the child at all stages of the proceeding. The Court states,

“A proceeding where the issue is whether the child will be found to be ‘delinquent’ and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child ‘requires the guiding hand of counsel at every step in the proceedings against him’” (*In re Gault*, 1967 ).

*In re Gault* establishes the legal framework and precedent for juvenile representation by defense counsel in all juvenile delinquency courts.

National standards for juvenile representation further explicate the role of juvenile defense counsel to uphold due process rights for youth in delinquency court as established by *Gault*. The Institute of Judicial Administration-American Bar Association, the National Advisory Committee for Juvenile Justice and Delinquency Prevention, the National Council of Juvenile and Family Court Judges, and the National Juvenile Defender Center promulgated standards and guidelines for juvenile defense in accordance with *In re Gault*, professional responsibility standards for the practice of law, and professional consensus in the duties counsel owes juvenile defendants (National Juvenile Defender Center, 2009). These standards require juveniles to receive representation at all stages of the court process, and the standards reflect or explicitly state the role of defense counsel to represent the expressed interests of youth. The National



Council of Juvenile and Family Court Judges states the responsibility of the juvenile defense attorney to

“[a]pppear as an attorney for the youth in all hearings concerning a juvenile accused of an act where the defense attorney would appear if an adult committed the same act. This includes, but is not limited to, hearings for detention, speedy trial, motions, dismissal, entry of pleas, trial, waiver, disposition, post-disposition reviews, probation or parole violation hearings, and any appeal from or collateral attacks upon the decisions in each of these proceedings” (National Council of Juvenile and Family Court Judges, 2005: 30).

Most specifically, in its Standards for Juvenile Justice, the Institute of Judicial Administration-American Bar Association states, “In general, determination of the client's interests in the proceedings, and hence the plea to be entered, is ultimately the responsibility of the client after full consultation with the attorney. [...] Counsel for the respondent in a delinquency or in need of supervision proceeding should ordinarily be bound by the client's definition of his or her interests with respect to admission or denial of the facts or conditions alleged” (Institute of Judicial Administration-American Bar Association, 1979: 17). Similarly, the National Juvenile Defense Standards promulgated by the National Juvenile Defender Center state, “Counsel’s primary and fundamental responsibility is to advocate for the client’s expressed interest” (National Juvenile Defender Center, 2012b: 19). The multiple national standards promulgated in the decades after the *Gault* decision reflect the Supreme Court’s holding that juveniles have a due process right to counsel in the same manner adults have a Constitutional right to counsel in criminal court. Despite the Constitutional right to defense counsel and the national standards, defense counsel policies still differ greatly from state to state.

This study presents an inquiry into the application of The Racial State theoretical framework in juvenile justice. Race began as a creation of the modern state as enlightenment, innovation, and government structures emerged in the fifteenth century. The creation of race

served to maintain the homogeneity and power structure of landowning Whites. Critical theorists establish this power structure permeates the criminal and juvenile justice systems in the United States. Criminal and juvenile justice policies that use race-neutral language, but have a disparate impact based on race, ethnicity, and socioeconomic status, contribute to the maintenance of the current power structure in society. Juvenile defense attorneys restrict the power of the state to deprive youth of liberties by protecting the due process rights of youth, thereby potentially limiting the disparate impact on non-White youth in the juvenile justice system. Prior research establishes the validity of a racially disparate juvenile justice system; due process protections, upheld by defense counsel, as a guard against overarching state power to deprive liberty; and the differences in defense counsel policies across states. This study extends the prior research further to explore the relationships among these established findings.

## **Literature Review**

Prior research on the role of state power through formal social control, including the criminal justice system, indicates a relationship between an increase in non-White racial/ethnic groups and an increase in formal social control by the state. This prior research forms the foundation of the project's inquiry into the relationship between the presence of non-White and lower socioeconomic groups and the provision of defense counsel in juvenile delinquency court. Prior studies and assessments on juvenile defense portrays a lack of access to defense counsel for youth in delinquency court. As a protectors of due process rights, which serve to limit excessive State power to deprive individuals and groups liberty, access to defense counsel becomes critical in limiting disparate social control by the state over non-White and lower socioeconomic youth. Cumulatively, these fields of research inform and guide the inquiry in this study.

### **Empirical Findings on the Relationships Among State Power, Community Demographics, and "Race-Neutral" Laws**

Prior research supports the theoretical connection between the disparate impact of seemingly race-neutral laws and the maintenance of White power structures in society. Many of these studies take a quantitative approach to demonstrate the increase of social control by the state that correlates with an increase in the rate of non-White populations within specific jurisdictions (Chamlin, 1989; Jackson, 1989; Stults & Baumer, 2007; Bontrager, Bales, & Chiricos, 2005; and Kautt, 2002). The studies also find the increase in formal social control by the state has a disparate impact on non-White groups (Chamlin, 1989; Jackson, 1989; Stults & Baumer, 2007; Bontrager, Bales, & Chiricos, 2005; and Kautt, 2002). This established association appears in several societal institutions. While many of the studies measure formal

social control of the state through the impact on citizens – such as arrest, conviction, and incarceration rates – some studies measure formal social control through state-level legislation (Behrens et al. 2003; Brown-Dean, 2003). Both types of measures for formal social control establish a statistically significant relationship between higher levels of formal social control through state power and higher rates of non-White populations in communities.

Research on the association between high population rates of non-White groups and formal social control often find an increase in non-White population rates corresponds with higher levels of formal social control. Researchers found criminal justice policies, and the manner in which officials implement policies, in the areas of policing, courts, and corrections have a more restrictive and punitive impact in locations with higher rates of non-White populations. While non-White populations engage in offending behaviors with the same or lesser frequency as White populations, the increase in formal social control still correlates with the increase in non-White population rates (Chamlin, 1989; Jackson, 1989; Stults & Baumer, 2007; Bontrager, Bales, & Chiricos, 2005; and Kautt, 2002; Behrens et al., 2003). Often theoretically framed as a prejudiced fear of non-White groups, research identifies a perceived threat to the status of the existing social arrangements, which grants Whites power and privilege, that correlates with the increase in formal social control (Blalock 1967; Hawkins 1987).

Studies examining “minority group threat” theory identify associations between large rates of non-White populations and differences in criminal justice policies, procedural implementation of the policies, and public opinions related to criminal justice (Blalock, 1967; Hawkins, 1987). Research findings indicate increase in police mobilization, arrests, and use of deadly force correlate with higher percentages of non-White populations (Stults & Baumer, 2007; Chamlin, 1989). Criminal justice expenditures, collateral sanctions, and legislated felony

disenfranchisement, as forms of formal social control, also correlate with higher percentages of non-White groups in a geographical location (Stults & Baumer, 2007; Behrens et al., 2003).

Public attitudes and opinions follow the same trends as the findings on criminal justice policies and practices (Bontranger et al., 2005). Individuals who live in areas with higher rates of non-White groups perceive crime rates as higher, indicate more support for capital punishment, and hold more punitive attitudes than areas with lower rates of non-White groups (Bontranger et al., 2005).

The findings vary in their findings of whether the mere presence of non-White groups in one geographical location, the influx of racial diversity, or the boundary lines of non-White groups in close proximity to Whites, results in the correlation between non-White groups and an increase in formal social control through the criminal justice system (Blalock 1967; Hawkins 1987). Studies also indicate a co-variation occurs between economic conditions and racial diversity as influences on an increase in formal social control (Chambliss & Seidman, 1971). Spending allocations for police forces, police force size, and the harshness and length of adult sentencing outcomes correlate with the demographic characteristics of the geographic jurisdiction (Chamlin, 1989; Jackson, 1989; Stults & Baumer, 2007; Bontrager, Bales, & Chiricos, 2005; and Kautt, 2002).

Following the trends established with studies on the adult criminal justice system, research on racial threat and juvenile court outcomes indicate a relationship between race and disparate outcomes for youth (Leiber et al., 2016; Thomas et al., 2013; Kempf-Leonard, 2007; Leiber and Mack, 2003; Bridges et al., 1995). Research has looked at detention, diversion, petition, adjudication, and disposition for youth and found growing support in recent decades for disparate outcomes at each of those contact points during the juvenile court process. The studies,

however, conceptualize race as an independent variable comprised of the race of each child in the study, rather than exploring the relationship between general population characteristics of the community in relationship to the racially disparate impact of the court process on youth (Leiber et al., 2016; Thomas et al., 2013; Kempf-Leonard, 2007; Leiber and Mack, 2003; Bridges et al., 1995).

### **Empirical Findings on Access to Quality Juvenile Defense**

Qualitative and quantitative studies on juvenile justice, and more specifically juvenile defense, highlight discrepancies in the availability of defense counsel to youth in juvenile delinquency court. Based on local practices guided by state laws, access to quality defense counsel differs by location, courtroom, and youth defendant. Predominately, youth in juvenile delinquency court require the appointment of defense counsel by the state-based indigence qualifications. Although all youth in the United States have the right to defense counsel, the appointment, quality, and practices of counsel vary greatly.

Studies on juvenile defense counsel and delinquency court establish a pattern of limitations to quality defense counsel for youth. While every state provides youth the right to defense counsel through state statutes (National Juvenile Defender Center, 2012b), youth still have restrictions on due process rights due to lack of access to defense counsel and limits on defense counsel advocacy regarding transfers to adult court. Limitations on defense counsel advocacy result from lack of access to quality defense counsel due to waiver, role confusion, limited duration of representation, and indigence determinations.

As discussed below, peer-reviewed research and general assessments on access to quality defense counsel results in similar findings. Generally, researchers note that the mere presence of

a defense attorney in juvenile delinquency court does not adequately result in quality representation for youth. Further, the findings demonstrate widespread differences in defense counsel practices and judicial practices that create large disparities in the quality of defense representation youth receive within single states. While many of the peer-reviewed studies inquire into the relationship between the presence of defense attorneys and dispositional results in delinquency court, they discuss, at length, the lack of quality defense counsel as a likely reason for some of the disparate findings (Feld, 1989; Berkheiser, 2002; Feld, 2010).

Research that emerged after the *Gault* decision in the mid 1970s and early 1980s relied on limited methodological designs and used similar independent and dependent variables, resulting in consistent findings: defense counsel in juvenile court correlates with a harsher disposition (Stapleton and Teitelbaum, 1972; Ferster and Courtless, 1972; Clarke and Koch, 1980). These studies rely on the presence of defense counsel in court as the independent variable and the dispositional outcomes as the dependent variable, conceptualizing the impact of the defense counsel as measured solely by dispositional outcome (Stapleton and Teitelbaum, 1972; Ferster and Courtless, 1972; Clarke and Koch, 1980).

The more recent peer-reviewed research on juvenile defense counsel follows a similar research design to the initial studies emerging after *In re Gault*. These studies conceptualize defense counsel as having an attorney present in juvenile court to represent the youth at any point during the proceeding, rather than continuous representation throughout all stages of the proceeding (Feld, 1989; Burruss and Kempf-Leonard, 2002; Armstrong and Kim, 2011). Research focuses on statistics depicting general appointment of counsel, waiver of counsel, and the rate of representation based on the harshness of the offenses. In the studies that look at the impact of juvenile defense counsel, the researchers identify the presence of defense counsel as

the independent variable and the harshness of the sentence resulting from adjudication as the dependent variable (Stapleton and Teitelbaum, 1972; Ferster and Courtless, 1972; Clarke and Koch, 1980; Feld, 1989; Burruss and Kempf-Leonard, 2002; Armstrong and Kim, 2011). The studies identify barriers to accessing quality defense counsel, or depict the lack of counsel, without extensive discussion on the role of statutes, court rules, or case law on defense counsel (Clarke and Koch, 1980; Feld 1989; Burruss and Kempf-Leonard, 2002; Armstrong and Kim, 2011).

The National Juvenile Defender Center, a resource and advocacy center for juvenile defense, has conducted 21 state assessments of juvenile access to quality defense counsel in the US. These assessments entail the collection and analysis of qualitative, quantitative, and legal research to determine the barriers to quality defense counsel in each state. The assessments completed by NJDC and academic studies found the same trends across studies and across US states. These trends present five common themes, often overlooked by laws providing defense representation, that form barriers to quality juvenile defense representation: waiver, role confusion, timing and duration of counsel appointment, indigence determinations, and decisions on transfer to adult court lacking defense counsel review.

### *Waiver of Defense Counsel*

Systemic barriers in the juvenile court diminish the ability of juvenile defense counsel to fulfill the role of adversarial advocate of a juvenile's expressed interests. The lack of defense counsel representation for youth contributes limits the due process rights of youth. High rates of waiver of counsel creates a significant barrier to the ability of defense to maintain the adversarial system in the juvenile court. Studies show the high rate of waiver of counsel in juvenile court across the United States (Feld 1989; Foxhoven 2007; National Juvenile Defender Center 2010;



National Juvenile Defender Center 2012; Burrell 2012; National Juvenile Defender Center 2013).

Some states implement the adult waiver of counsel standard in delinquency court and only allow youth to waive counsel when the waiver is made “knowingly, intelligent and voluntary under the totality of the circumstances” (Feld 2003; Feld, 1989; National Juvenile Defender Center 2012b). This standard allows courts to uphold the vast majority of waivers of counsel by youth, despite debates regarding the capacity of youth to make a decision regarding the waiver of counsel (Feld, 2003). Waiver occurs for a variety of reasons –

“parental reluctance to retain an attorney; inadequate or non-existent public-defender legal services in nonurban areas; a judicial encouragement of and readiness to find a waiver of the right to counsel in order to ease administrative burdens on the courts; cursory and misleading judicial advisories of rights that inadequately convey the importance of the right to counsel and suggest that the waiver litany is simply a meaningless technicality; a continuing judicial hostility to an advocacy role in traditional treatment-oriented courts; or a judicial predetermination of dispositions with non-appointment of counsel where probation or non-incarceration is the anticipated outcome”

– and becomes a fundamental challenge to the due process rights of youth in delinquency court (Feld, 1989: 1200). Without an attorney, youth face the court process and delinquency determination without formal pressure on the state to meet the required evidentiary burdens in specific cases, preserve elements of the case for appeal, or identify systematic issues supporting unyielding state power (see May and Timmons, 2014; National Juvenile Defender Center, 2012; Stevenson, 2015; Tonry, 2004). Waiver of defense attorneys allows the state to present its case to the judge without the adversarial process required as part of the due process rights for youth.

### *Role Confusion*

Juvenile defense attorneys hold the role of advocating for the youth’s express interest and holding the State accountable for discretionary decisions made at times of arrest, fact-finding,

charging, and during the court process. The role of the defender creates the necessary adversarial environment in the courtroom to uphold the due process rights of the youth. This occurs through the representation of the youth expressed interests. The expressed interest standard of defense in delinquency court creates some tension with the overall goal of the juvenile justice system to rehabilitate youth. Further, the role of counsel to advocate for the best interests of the child in dependency (child welfare) matters results in additional confusion regarding the role of defense counsel in delinquency court. When defense attorneys do not advocate for the expressed interests of youth, the adversarial process and due process protections weaken.

Many barriers to youth due process rights result directly from confusion on the role of defense counsel in juvenile delinquency court. The state assessments reveal systemic issues such as insufficient access to specialized training, lack of zealous legal advocacy (including an “overwhelming number” of pleas at first appearance, lack of probable cause hearings, lack of motions practice, lack of dispositional advocacy, and lack of post-dispositional advocacy), lack of meaningful contact with clients in pre-trial detention, lack of confidential spaces for attorney-client conversations, lack of advocacy to combat unjust practices, and lack of awareness of collateral consequences (National Juvenile Defender Center 2013; National Juvenile Defender Center 2012b; National Juvenile Defender Center 2010). Many of these systemic issues result from the perception of court as a non-adversarial proceeding based on the rehabilitative goal of the juvenile justice system and the role of the child’s attorney in the child welfare system. Further, the perception of court as non-adversarial contributes to the systemic problems, creating a cycle in which the court fails to provide juveniles with defense counsel as envisioned in *Gault*.

The role of guardian *ad litem* in dependency court and delinquency court further confounds the role of defense counsel as an expressed interests advocate within the framework of

a “best interests” court. In dependency court, the court determines whether it is in the best interest of the youth to come under the custody of the court rather than remain in the custody of his or her parents. The youth receive representation in these proceedings from counsel who often carry the title “guardian *ad litem*.” The guardian *ad litem* advocates to the court for his or her independent assessment of the best interests of the child. The role of counsel in dependency court differs substantially from the role of defense counsel in juvenile court but contributes to the role confusion by emphasizing a goal and advocacy standard of bests interests for the child (in contrast to the express-interests standard in delinquency court (Feld, 2003; Foxhoven, 2007; Burrell, 2012)).

The role of defense counsel in delinquency court as an advocate of expressed interests requires defense counsel to assume responsibilities that differ from counsel in dependency court. The defense attorney represents the expressed interests of the youth and can only do this by giving the client "meaningful opportunity to participate in his or her own defense" (National Juvenile Defender Center, 2012). This can only occur when the defense counsel engages with the youth, understands the charges from the youth's perspective, and enables the youth to communicate his or her desire regarding the trajectory of the defense argument. In part, engaged communication with the client requires explaining complex legal matters to the youth (National Juvenile Defender Center, 2012). This role of defense counsel differs greatly from the role of a guardian *ad litem*, who presents to the dependency court an independent assessment of what the court should rule in light of the best interests of the youth and does not have to engage the youth in directing a legal defense.

Further complicating matters, occasionally youth in delinquency court have guardian *ad litem* representation and defense counsel representation in the same matter before the court

(National Juvenile Defender Center, 2012; National Juvenile Defender Center, 2012b; *In re Austin M.*, 2012). Although in theory the appointment of two separate attorneys could contribute to a clearer understanding of the two types of representation, often having both types of counsel in the same courtroom creates more confusion (National Juvenile Defender Center, 2012; National Juvenile Defender Center, 2012b; *In re Austin M.*, 2012). Despite the differences in roles and training requirements, court will sometimes ask a guardian *ad litem* to take on a defense role or act simultaneously as a guardian *ad litem* and as defense counsel. As noted in one assessment by the National Juvenile Defender Center and representative of situations that occur frequently in delinquency courts across the country,

“The ways in which these roles are commingled and confounded in juvenile courts across Colorado was alarming. GALs were sometimes encouraged by judges to take on defender responsibilities alongside their duty to represent the child’s best interest. It was often the judge that would ask the GAL to “stand in” for a plea. One investigator observed twin 13 year old brothers taking a plea to a sex offense and the Court asked a GAL to stand in and represent them for purposes of the plea. She did so. She had never met the boys nor talked to them before or during the proceeding. When the assessment team investigator asked the GAL afterwards who advised those twin brothers about the sex offender registry, the GAL simply stared blankly. Investigators often observed GALs merely obliging requests by the court to stand in as a substitute for defense counsel” (National Juvenile Defender Center, 2012: 37).

In this example, the guardian *ad litem* failed to determine the express interests of the boys and did not assist them in directing a defense, understanding the process, or the considering the consequences of a plea, ultimately failing to fulfill the role of defense counsel.

An Illinois court case that came before the State Supreme Court demonstrates the impact role confusion of the guardian *ad litem* and defense counsel has on the due process rights of a youth and the impact role confusion has on other delinquency court actors (*In re Austin M.*, 2012). In this case, the Court found Austin M. did not receive “the type of counsel” guaranteed by due process and that found an inherent, per se conflict of interest when the defense attorney

acted as a guardian *ad litem* (*In re Austin M.*, 2012). Further, in dicta, the Court acknowledges the role confusion that extended beyond the roles of defense counsel and guardian *ad litem* into the role of the prosecutor who defends the interest of the state (*In re Austin M.*, 2012).

To complicate matters further, academics and advocates have identified and interpreted ambiguity within the *Gault* decision regarding the role of parents in delinquency court. The *Gault* decision does not clearly denote whether defense counsel should take the parents' interests into consideration when advocating for the juvenile (see *In re Gault*, 1967). Although common interpretation of the decision focuses on the juvenile's express interests over the interests of the parents, a lack of clear direction from the Court fails to recognize the "everyday" realities of juvenile court in which parents, who may have interests counter to the interests of the youth, assert authority over the child's right defense counsel and to direct his or her own defense (Fedders, 2010). Often parents pressure or make the decision for youth to waive counsel or accept a plea negotiation. This pressure often derives from a perception of delinquency court as non-serious and a desire to conclude the matter as quickly as possible (Fedders, 2010). The acceptance of parent-directed decisions regarding waiver and plea-bargaining further undermines and confuses the role of defense counsel to advocate for the expressed interest of the youth in delinquency court.

The rules of professional conduct enforced in each state dictate the role of counsel to advocate for expressed interest of the client, and in delinquency court, the client is the juvenile, thus requiring the advocacy for the expressed interest of the juvenile (National Juvenile Defender Center, 2012b.) Within the literature, no debate exists regarding any implication of the rules of professional conduct to advocate for the juvenile's best interest. This lack of debate leads to the assumption that role confusion creates advocacy for the best interests of the youth rather than a

professional and ethical decision regarding best-interests advocacy in delinquency court ((National Juvenile Defender Center, 2012b). Any debate surrounding the role of defense counsel to advocate for the expressed interests of the youth arises within a competency and diminished capacity of the client framework (Katner, 2007). The rules of professional conduct require an attorney who represents a client with “diminished capacity” to take protective measures such as appointing a guardian *ad litem* (Katner, 2007). A client with diminished capacity does not have the ability to act in his or her own interest (Katner, 2007). Although significant debate exists regarding the capacity of youth to direct defense counsel and participate in his or her own defense, the standard in most states is the same as the adult standard, which requires a low level of capacity, enabling youth to meet the competency standard (Katner, 2007; Larson, 2011). The low-level standards for mental capacity and legal competence contributes to the removal of this issue from the “best interests versus expressed” interests debate. Most courts find youth competent to stand trial, indicating youth have the competency to direct counsel to make an expressed interests argument to the court on behalf of the youth.

#### *Timing and Duration of Appointment of Counsel*

Defense attorneys have the role and responsibility of protecting due process rights throughout the entire time period a youth has contact with the justice system (National Juvenile Justice Center, 2012b; US Department of Justice, 2015). This includes review of and advocacy during contact with the police, initial conversations with prosecutors, detention hearings, trial, appeals process, and post-adjudication placement (National Juvenile Defender Center, 2012b; Feld 2010). Appointment of counsel at initial contact with the juvenile justice system, with the duration of the appointment for the entire time a youth remains in the system, allows defense attorneys to protect youth rights throughout the entire process and preserve a record. Review of

police interrogation methods, prosecutorial plea offerings, conditions of confinement, and violations of probation becomes impossible without early and longstanding appointment of counsel (Feld, 2010; Berkheiser, 2003; Bookser, 2004; Puritz and Shang, 2000).

Defense counsel representation throughout the entire process preserves the rights of the individual youth and provides greater opportunities to protect due process rights for all youth in the juvenile justice system. Defense attorneys have the unique position to review, at a systemic level, injustice occurring within police, court, and corrections policies and practices. Defenders may raise observations of justice violations through individual court advocacy, policy recommendations, and the appeals process. Early appointment allows the defense attorney to advise during a plea bargain and bring a case to trial, creating a record for future review.

Continued representation enables the defender to appeal on behalf of the individual youth and to improve the laws governing juvenile justice. Researchers assert that limitations to the appointment of counsel contribute to low rates of appeals on delinquency matters (Feld 2010; National Juvenile Defender Center, 2012b). Early and continued appointment protect individual and collective due process rights for youth in delinquency court.

### *Indigence Determinations*

Due process rights granted to youth in delinquency court include the right to appointed for youth determined indigent. The determination of indigency can serve as a barrier to appointment based on the presumption that begins the determination process (Puritz et al., 1995; National Juvenile Defender Center, 2012b; National Juvenile Defender Center, 2012). Indigency determinations that begin with the presumption a youth defendant has the financial resources to

pay for private counsel may prevent the youth from obtaining counsel (National Juvenile Defender Center, 2012b). Youth often find themselves immersed in the court proceedings quickly and without full comprehension of the process or the potential outcomes (Henning, 2009; May and Timmons, 2014). Further, the youth's parents often bring an urgency to conclude the proceeding as quickly as possible, if the parents participate in the process at all (National Juvenile Defender Center 2012b). As a result, gathering and presenting financial information to the court to qualify as indigent becomes a heavy burden on the parents and a barrier to accessing defense counsel. Even if parents have the financial resources and do not meet the official indigency requirements, the parents may not spend the money on legal representation for the youth (National Juvenile Defender Center, 2012). While the youth holds the right to counsel, the youth does not hold the financial resources to hire counsel; parents hold these resources and the power to decide how to spend them. Alternatively, a presumption of indigence begins with the assumption that youth do not have the financial means to hire counsel and places the burden on the state to prove otherwise. A presumption of indigence also reflects the likely financial resources of the child, who maintains the right to representation, without incorporating the financial status of the parent, who may not act in the best interests of the child (National Juvenile Defender Center, 2012b, Puritz et al; 1995).

The prior research presents a series of trends upon which this dissertation project seeks to build. Deriving from justice policies and practices, studies indicate disparate treatment of non-White racial groups and persons of lower socioeconomic status in the justice system. These studies correlate an increase in disparate outcomes for these population groups with an increase in the rate of non-White persons within communities. These similar findings appear in all three



areas of criminal and juvenile justice: police, courts, and corrections. Further, these disparate outcomes exist for non-White groups even though policies contain race-neutral language.

The provision of due process through defense counsel in juvenile delinquency court is a critical protection against state power; however, the provision of and access to quality defense counsel remains limited in most states. While states vary in their legal provision of defense counsel in juvenile justice proceedings, common trends emerge in the barriers to accessing defense counsel, including: waiver, role confusion, timing and duration of appointment, and indigence determinations. Some states address and remove these barriers explicitly in statutes, court rules, and case law, while others remain silent and provide only a general provision of counsel. This dissertation project seeks to determine whether these “race-neutral” provisions of defense counsel correlate with the rates of non-White and lower socioeconomic status groups in states, as found in related areas of prior research.

### **Research Questions and Hypotheses**

Prior research establishes the differences in the administration of justice for youth as an ongoing, race- and socioeconomic-based problem of disparity. This dissertation establishes an exploratory inquiry into whether relationships exist among the demographic composition of states, the disproportionate contact of minority youth in the juvenile justice system, and the provision of due process protections through defense counsel. The primary research questions are:

- 1) Are there significant relationships among the racial composition of states, the rates of disparate outcomes for youth in the juvenile justice system, and the provision of due process through defense counsel policies?

- a. Do significant relationships exist between the racial/ethnic composition of a state and the racial/ethnic-based rate of contact with the juvenile justice system across all contact points?
  - b. If yes, do policies with strong, explicit provisions and protections of access to defense counsel for youth in delinquency courts impact the relationship between state racial/ethnic composition and rates of contact with the juvenile justice system?
- 2) Are there significant relationships among the socioeconomic composition of states, the rates of disparate outcomes for youth in the juvenile justice system, and the provision of due process through defense counsel policies?
- a. Do significant relationships exist between the socioeconomic composition of a state and the racial/ethnic-based rate of contact with the juvenile justice system across all contact points?
  - b. If yes, do policies with strong, explicit provisions and protections of access to defense counsel for youth in delinquency courts impact the relationship between state socioeconomic composition and racial/ethnic-based rates of contact with the juvenile justice system?

The prior research directs the hypotheses as:

- 1) As the percent of minority populations increase in states, the rates of minority contact with the juvenile justice system will increase.
- 2) As the due process protections in states increase, they will mediate and decrease the rates of minority contact with the juvenile justice system associated with percent minority.

- 3) As the socioeconomic status of populations decreases in the states, the rates of minority contact with the juvenile justice system will increase.
- 4) As the due process protections in states increase, they will mediate and decrease the rates of minority contact with the juvenile justice system associated with the socioeconomic status indicators.

The inquiry into the research questions encompasses a mixed methods approach involving content analysis to convert qualitative data for quantitative analysis.

## Methods

### Data

This study focuses on three types of data: 1) state demographic data, 2) state policies on juvenile defense, and 3) state records of disproportionate minority contact with the juvenile justice system. The state-level data for this dissertation project all derives from public resources. The US Census provides the demographic data, the National Juvenile Defender Center offers a collection of data on state juvenile justice policies – including state legislation, case law, and court rules – on juvenile defense, and the Haywood Burns Institute shares data on disparate youth contact with the juvenile justice system. The US Census and Haywood Burns Institute presents quantitative data, while the National Juvenile Defender Center offers qualitative data on state policies.

The state demographic data comes from the US Census American Community Survey, which provides three-year averages for each measure of socioeconomic status and racial composition of the states. This project uses the five-year averages for 2013 as measures for state demographics. The Haywood Burns Institution provides downloadable data for the public through its “Balanced Juvenile Justice” initiative. This data derives from the Office of Juvenile Justice Delinquency Prevention (Haywood Burns Institute). The counts from the 2013 data set for US states comprise the contact-point data for the variable computation and analysis in this study.

The National Juvenile Defender Center compiled the state laws on defense counsel. To compile these data, attorneys and law students, trained in legal research and juvenile defense, collect the qualitative data for the National Juvenile Defender Center using Westlaw, a legal search engine designed for practicing attorneys and law-makers. Westlaw provides all state-level

statutes, court rules, and case-law for each state, including the most up-to-date statutes and case law. The National Juvenile Defender Center updates the policies by state, as the organization has the capacity to do this work; thus, state policies presented on the website range from 2013 to 2016. The data-cleaning process for the state policies includes identifying the policies in place in 2013, if the website presented data for a later year.

### *Variables*

The quantitative analysis contains three types of variables: demographic variables, contact-point variables, and due process variables. The data limitations (discussed further below) associated with the disproportionate minority contact (DMC) variables dictated the use of 2013 data for 34 states. The qualitative analysis encompassed all 50 states and the District of Columbia to conceptualize, define, code, and transpose the qualitative data into quantitative data. Following the qualitative analysis, transposing the qualitative data into quantitative data, the 34 states available in the DMC data are used in the quantitative analysis.

The independent variables reflect the theoretical structure of the study with a focus on groups often lacking power in the United States: non-White groups, specifically Blacks, and people of a lower socioeconomic status. The state demographic variables serve as the independent variables. These include the percent Black, percent Hispanic, and percent White. The US Census presents these data as percentages of the total state population. The analysis also contains an inquiry into the role of diversity in the state. To examine this, a diversity index is calculated based on the percent Black, Hispanic, Asian, American Indian (including Native American, Alaskan Native, and Native Hawaiian/Pacific Islander) and White in each state. The socioeconomic variables include the percent in poverty in the state, the percent of people with a

Bachelors degree or higher degree, and the percent unemployed in the civilian workforce in each state.

The contact-points for racially disparate outcomes serve as the dependent variables in this analysis. The Haywood Burns Institute presents the state-level DMC data as counts. Prior to the analysis in this dissertation project, the DMC counts are transposed into rates that take into consideration the corresponding rate of the race/ethnicity within the greater population. All the contact-point variables represent the rate per 100,000 people of the same race/ethnicity in the state. These variables include the following contact points for Black, Latino/a, and White youth: arrest, detention, diversion, petition, delinquency finding, confinement, and probation.

The due process variables serve as mediating variables in the analysis. The qualitative data (state policies) are transposed into quantitative data through a qualitative coding process. The below process ultimately conceptualizes and operationalizes due process protections through the provision of defense counsel into five variables: right to counsel, waiver of counsel, indigency determination, post-dispositional advocacy, and total due process protections.

### *Qualitative Analysis*

The qualitative analysis began with an identification of themes and categories for the data set. The researcher reviewed the entire data set of statutes, court rules, and regulations for general themes throughout the data. After the initial review, the researcher went through the data set again and recorded the themes that emerged from each set of state policies on the provision of juvenile defense in delinquency court. The resulting set of themes from this stage of analysis encompasses all of the data as a whole and includes: right to counsel, indigency determination, waiver of counsel, and post-dispositional representation.

The theme of right to counsel emerged from the data as a basic premise for the provision of defense counsel for youth in delinquency court. The theme encompasses the components of defense specific to when and how defense counsel represents youth in court. The post disposition theme extends the right to counsel into proceedings after the delinquency court rules on a disposition for the adjudicated youth. Post-disposition, for the purposes of this inquiry into the data, includes modifications of the disposition, addressing conditions of confinement, and the appeals process. The themes of waiver of counsel and indigency determinations comprise potential limitations to the right to counsel. Challenges demonstrating indigency and uninformed (or unintentional) waiver of counsel erodes right to counsel provisions; thus comprising two separate themes.

Following identification of themes, the researcher reviews the data set for categories within the themes. This review consists of reading through each set of state policies and recording the manner in which each state addressed the designated themes. From there, the researcher identifies the categories under each theme, representing the entire data set. These categories emerge from the data set as a whole; no single state contained all of the categories in its policies for juvenile defense. The chart below lists the themes and corresponding categories.

Table 1: Themes and Categories for Qualitative Data			
Right to Counsel	Waiver of Counsel	Indigency Determination	Post-Dispositional Representation
Timing of appointment	Youth read/informed of rights	Presumption of indigence	Motions/Motion preparation
Express procedural points for representation	Read rights and/or waived rights in presence of counsel Informed of rights (through	Youth assets considered only	Post-disposition hearings

Informed of right to counsel	appointment of counsel or reading of right) at detention hearing	Indigence (including finding process) doesn't block/delay representation	Review of dispositional order
Representation during interrogation	Youth consulted with counsel Counsel investigated facts		Modify disposition order (including change to placement)
Opportunity to confer with counsel	Youth waives knowingly Youth waives with understanding	Fee applied to indigence determination	Modify custody orders Modify probation orders
Court expressly mandated to appoint counsel	Youth waives intelligently/competently		Probation revocation Probation violation
Availability of a continuance for the proceedings due to lack of counsel	Youth waives voluntarily Youth informed of the charges, possible dispositions, possible defenses, knows consequences of charges, consequences of no representation, collateral consequences of adjudication (any of these)		On parole/probation Seeking parole
Limitations to representation based on possible dispositional outcomes	Youth expressly waives right to counsel		Parole revocation Parole modification
Removes conflict of interest with parents	Waiver in writing /signed/on the record		Conditions of confinement/placement Recommitment
Addresses the role of counsel	Parent, guardian, adult, et al. not allowed to waive right Court verifies waiver made knowingly and voluntarily Court holds hearing on waiver Youth informed of right at other stages of proceeding, even if waived earlier		Extension of placement/jurisdiction Hearing on aftercare revocation Transfer hearing (waiver of jurisdiction to adult court)



	Standby counsel appointed for youth to assist at court		Appeals of final order  Appeal
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The assignment of numerical scores relied on the juvenile defense literature. The literature establishes and explains the implications of policy and practices on the provision of due process and defense counsel. As a whole, it makes connections between the protections for defense counsel the manner in which these protections impact whether youth have access to defense counsel. For example, protections such as requirements for waiver of counsel to occur in writing, after consult with counsel, and without the undue influence of parents who potentially present conflicts of interest for the youth help to ensure youth do not waive counsel without understanding the legal impact. As established by the literature, explicit inclusion of these components provides more legal protection for youth than a general requirement for youth to “knowingly, intelligently, and voluntarily” waive counsel.

Research has not established which explicit provisions provide more protection than others, so each explicit protection received one point in every category. The one point reflects that the explicit provision increases protection as compared silence (no provision).<sup>2</sup> In order to receive the point, the statute, case law, or court rule must explicitly state the protection. The language in each set of state statutes, cases, and regulations differ, so the analysis relies on

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<sup>2</sup> The exception consists of points allotted for waiver of counsel. A few states do not allow for waiver of counsel. This restriction guarantees defense counsel representation; however, it removes the option for the defendant to make a decision regarding representation. To accurately capture this difference, the scoring system allocates additional points to the provision of counsel, as depicted in Appendix A.

keywords and patterns to identify whether the content of the state policies provide or limit due process protections.

The below section discusses the categories that emerged from the content analysis, examples from state policies, and the scoring process as supported by the literature. Appendix A includes a chart of the themes, categories, and the full numeric scoring for the qualitative analysis.

### Right to Counsel

The category for “**timing of appointment**” contains different procedural points at which a youth may receive defense counsel. As a result, the category includes subcategories of: intake following arrest, pre-petition detention, post-petition, and adjudicatory trial. The subcategories reflect the language presented in the policies. It acknowledges that different states may use different language to refer to the same procedural point for appointing counsel. The timing of appointment may differ based on local jurisdictional practices, case-based differences, and the day of the week. For example, intake may occur at the same time as a decision to file a petition, or the filing of a petition may occur well after intake. The subcategories reflect the language present in the policies for timing of appointment.

Related to the timing of appointment, the “**court expressly mandated to appoint counsel**” category reflects the difference between a mandate to appoint counsel (such as using the term “shall”) and the discretion to appoint counsel (such as using the term “may”).

The category for “**procedural representation points**” depicts whether defense policies state the multiple procedural points at which youth have a right to counsel in the juvenile justice system. This category differs from the appointment category by recognizing policies for

explicitly preserving the right to counsel beyond the initial appointment. It does not include references to post-adjudicatory representation, which comprises a separate theme with its own categories. The category begins with the first procedural point of intake extends to the adjudication decision. For each explicit statement of representation, the provision receives a point.

The “**informed of right to counsel**” category acknowledges the language in some state policies requiring youth to be informed of the right to counsel in a particular manner or at a particular point in the process. Informing a youth to the right to counsel does not necessarily also mean appointment of counsel at that time, which is why this category stands distinct from the appointment category. However, some overlap occurs between this category and the appointment of counsel category, depending on the language of state policies. To address the distinction and possible overlap of categories, some states received points in this category and the appointment of counsel category, depending on the explicit language in the state policies. As an example: In Idaho, youth are informed of their right to counsel “as early as possible in the proceedings, and in any event before the hearing of the petition on the merits” Idaho Code Ann. § 20-514(4).

The category for defense counsel “**representation during interrogation**” consists of explicit language allowing for defense counsel to be present during interrogations of youth that may occur prior to or after petition. Similarly, the “**opportunity to confer with counsel**” category denotes language allowing youth to confer with counsel prior to official court proceedings. This category differs from the opportunity to confer with counsel category under the waiver of counsel theme, which reflects a consult specific to the waiver decision. Under the theme of right to counsel, this category reflects a broader requirement for counsel to consult with the youth prior to appearing before a judge or allowing the youth to make case-related decisions.

The “**availability of a continuance for the proceedings due to lack of counsel**”

category reflects the role of the court in protecting access to counsel. A court that allows for the proceedings to pause until youth obtains defense counsel representation, or waives counsel in the legally prescribed manner, helps to ensure due process protections for youth. As an example, “if a child appears in court without counsel for a [waiver hearing or an adjudicatory hearing]... and the child has not previously waived the right to the assistance of counsel in accordance with [state laws], the court shall continue and the clerk shall reschedule the waiver or adjudicatory hearing” and the public defender shall represent the child. (Md. Code Ann., Cts. & Jud. Proc. § 3-8A-20(e)).

“**Limitations to representation based on possible dispositional outcomes**” – this category acknowledges that some states provide a right to defense counsel only when youth face more restrictive dispositions as the result of a delinquent adjudication. For example, in Massachusetts, youth have the right to counsel in “a proceeding where the issue is whether the child will be found to be delinquent and subjected to the loss of his liberty is comparable in seriousness to a felony prosecution” (Mass. R. Crim. P. 8).

The category for when state policies “**addresses role of counsel**” recognizes the role of the defense counsel to protect the express interests of the youth in delinquency court. While the juvenile justice system maintains a rehabilitative goal to work for the best interests of youth, the defense attorney’s role is to uphold the express interest of the youth. This role runs counter to the traditional role of the guardian ad litem (most often representing youth in child welfare proceedings) to represent the best interests of the youth. Policies that explicitly acknowledge the adversarial role of the defense counsel fall into this category. As an example of policy language for this category: in New Hampshire, “When an attorney is appointed as counsel for a child,

representation shall include counsel and investigative, expert and other services, including process to compel the attendance of witnesses, as may be necessary to protect the rights of the child.” N.H. Rev. Stat. § 169-B:12(I-a). Related, if the language of the statute allows for a guardian *ad litem* to serve as defense counsel, without clarifying the differences in roles, the analysis process recognizes this potential role confusion. As an example, in Hawaii, “[T]he judge shall appoint counsel or a guardian ad litem to represent the person at all stages of the proceedings, including appeal” (Haw. Rev. Stat. § 571-87(a)).

States policies recognizing that parental interests do not always align with youth interests fall into the “**removes conflict of interest with parents**” category. Parents often have the ability to influence youth decisions regarding representation, and sometimes parents have interests that run counter to the youth’s interests (potentially both the best interest of the youth and the express interest of the youth). States that address this potential conflict of interest offer a stronger framework for access to defense counsel. As an example, in Iowa, ““If the child is represented by counsel and the court determines that there is a conflict of interest between the child and the child's parent, guardian or custodian and that the retained counsel could not properly represent the child as a result of the conflict, the court shall appoint other counsel to represent the child [...]” (Iowa Code § 232.11(4)).

### Waiver of Counsel

The “**read/informed of rights as part of waiver process**” and “**read rights and/or waived rights in presence of counsel**” categories protect youth by ensuring that youth know their right to counsel at the time of the waiver decision. The second category furthers this intent by requiring defense counsel to be present at this time as an increased protection. If the youth consults with counsel as part of the waiver process, the state policies meet the requirements for

the third category, **youth consults with counsel**. As an example, in Florida, “[W]aiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child’s right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel.” Fla. R. Juv. P. R. 8.165.

Separate from the above categories for informing youth of rights to counsel prior to waiver, the categories for youth comprehension of the right to counsel include: (1) “**youth waives knowingly**,” (2) “**youth waives with understanding**,” (3) “**youth waives intelligently/competently**,” and (4) “**youth waives voluntarily**.” Each standard contributes to increasing access to defense counsel by providing a check on whether the youth understands the implications of the waiver of counsel. State policies do not use all 4 categories; rather, the categories represent the range of language state policies on waiver decisions and many states incorporate at least two standards.

The “**informed of rights**” (through either appointment of counsel or the reading of rights) at detention hearing category informs the waiver decision; this category may overlap with the similar category under the right to counsel theme, and states may receive credit for providing information on rights to counsel at detention hearings in both areas.

If counsel looks into the facts of the case prior to waiver, the state policies fall into the “**counsel investigated facts**” category. Fact-finding prior to the waiver decision allows defense counsel to provide more information to the youth regarding potential legal outcomes and the trajectory of the case. This contributes a well-informed decision by the youth to waive or maintain defense counsel.

When “**youth are informed of the charges, possible dispositions, possible defenses, knows consequences of charges, consequences of no representation, or collateral**

**consequences of adjudication,**” this information allows them to better understand the consequences of waiving the right to defense counsel. If the state policies explicitly reference any of the components of this category, the state receives a point in this category.

The “**youth expressly waives right to counsel**” category protects the right to counsel by helping to ensure youth know they are waiving counsel. It limits unintentional waivers by eliminating implied waiver through actions or comments of youth not intended to waive counsel. If the state policies require the waiver to be in writing, the policies qualify for this category and the “**waiver in writing/signed/one the record**” category – a category that serves to collect a record of the waiver. Verbal waivers made in court do not meet the requirements of protection for this category, based on the lack of a transcribed court record in many juvenile courts.

Recognizing the influence of parents over youth decisions and potential for conflicts of interest between parents and youth, even if these conflicts do not appear significant, the “**parent, guardian, adult, et al. not allowed to waive right**” category explicitly the decision-making process to the youth. This protects the decision from parent assumptions that the process will be faster, less expensive, or less punitive without defense counsel. Although parents maintain influence over their children, the decision to waive counsel still remains with the youth.

The category for “**court verification of waiver made knowingly and voluntarily**” protects the youth right to defense counsel by providing a formal check on how well the youth understands waiver of counsel. If the state policies require the “**court to hold a hearing on waiver**” of counsel, this formal check also counts for the verification category. As an example, in Minnesota, “If the court accepts the child’s waiver, it shall state on the record the findings and conclusions that form the basis for its decision and shall appoint standby counsel.” Minn. Juv. Ct. R. P. 3.04(3). Further, in New York, the court holds a hearing to rebut the presumption youth

do not have the maturity to waive counsel. As a verification of waiver, the court must find that: “(a) The minor understands the nature of the charges, the possible dispositional alternatives and the possible defenses to the charges; (b) The minor possesses the maturity, knowledge and intelligence necessary to conduct his or her own defense. (c) Waiver is in the best interest of the minor” (National Juvenile Defender Center citing the N.Y. Fam. Ct. Act § 249-a).

If the “**court informs youth of the right to counsel at multiple stages of the proceeding**,” after youth have waived counsel, the state policies fall into this category. This policy protects youth right to counsel even after waive, by allowing the court to appoint counsel if the youth changes his or her mind after initial waiver of counsel at the start of the court proceedings. Similarly, if state policies allow for the “**appointment of standby counsel**” to assist youth after waiver of counsel and requesting counsel, the state policies fall into this category. As an example, in Pennsylvania, “If a child waives the right to counsel, the court may appoint stand-by counsel.” 42 Pa. Cons. Stat. Ann. § 6337.1(b)(4).

### Indigency Determination

The indigency determination theme contains the fewest categories of all the themes. These categories focus on the process for determining indigency rather than the threshold for indigency in each state. This category does not take into consideration the income level under which the family falls. The category for “**indigency does not block representation process**” ensures the determination for indigency does not result in the court proceedings moving forward without defense counsel representation as a result of an incomplete indigency determination. State policies that require the defendant to pay a “**fee to process the indigency determination**” limit the access to defense counsel for youth who do not have the financial means to pay the fee.



Potentially, if the youth does not have the means to pay the fee, the youth will not have access to appointed counsel as an indigent youth and will end up without representation. As an examples, in Washington, D.C., “if counsel is not retained for the [youth], or if it does not appear that counsel will be retained, counsel shall be appointed for the [youth]” (Super. Ct. Juv. R. 44(a)(1)). In Tennessee, the parent, guardian or custodian of the juvenile is assessed a \$50 administrative fee (Tenn. Code § 37-1-126(c)(1)). If the youth or parents cannot afford that amount, the fee can be waived or reduced; if the youth or parents can pay more, the fee may be increased up to a maximum of \$200 (Tenn. Code § 37-1-126(c)(2)).

The indigency determination theme does encompass the assets the court considers for the determination. The **presumption of indigence** category places the burden on the state to show the youth defendant does not qualify as indigent. These state policies automatically qualify youth as indigent and in need of appointment counsel unless proven otherwise. The category “**youth assets considered only**” requires the state policies to express explicitly the parents’ assets do not factor into the indigency determination and/or the determination relies solely on the youth’s assets. Policies in this category align with the prior categories recognizing the possibility that parents hold interests that differ or conflict with youth. The policies allow greater access to defense counsel when taking into consideration only youth assets. As an example, in Ohio, “Juveniles are presumed indigent. In determining the eligibility of a child for court-appointed counsel in juvenile court, only the juvenile’s income shall be considered when determining if counsel should be appointed.” (National Juvenile Defender Center citing Ohio Admin. Code 120-1-03(B)(4)).

## Post-Disposition Representation

The post-disposition representation theme contains categories related to the review of the adjudication proceedings, changes to court orders, conditions of confinement, and extended state jurisdiction over the youth. Specific to review of the adjudication proceedings are the following categories: **appeals, appeals of a final order, motion preparation, post-disposition hearings, review of dispositional orders, modification of disposition order, modification of custody order, probation revocation, probation violation**, representation while **on probation/parole or seeking parole, parole revocation, parole modification**, and **hearings on aftercare revocation**. The multiple categories that address similar type of review allow the coding to capture the difference in language across the state juvenile justice systems and encompass the transition of youth into adult systems (through the transfer/waiver to adult court process that differs by state).

State policies addressing post-dispositional representation explicitly state the procedural point qualifying for representation. For example, in Minnesota, the state policies list the following procedural points for post-dispositional representation: probation violation, modification of disposition, and appeals from delinquency adjudications or from extended jurisdiction juvenile convictions (Minn. Juv. Ct. R. P. 3.02; Minn. Stat. Ann. § 611.25(a)(3)).

Categories specific to representation related to confinement include: **conditions of confinement, recommitment, and extension of placement and/or jurisdiction**. Representation to uphold the due process rights of youth while the state restricts their liberty through confinement falls to the responsibility of juvenile defense attorneys, especially when youth remain under the juvenile court jurisdiction. The explicit direction from state policies to maintain

representation of youth through confinement increases the access to defense attorneys during this process. As an example, in Kentucky, a youth “in the custody of the Department of Juvenile Justice and is residing in a residential treatment center or detention center is entitled to be represented on a legal claim related to his or her confinement involving violations of federal or state statutory rights or constitutional rights” (Ky. Rev. Stat. § 31.110(5))<sup>3</sup>.

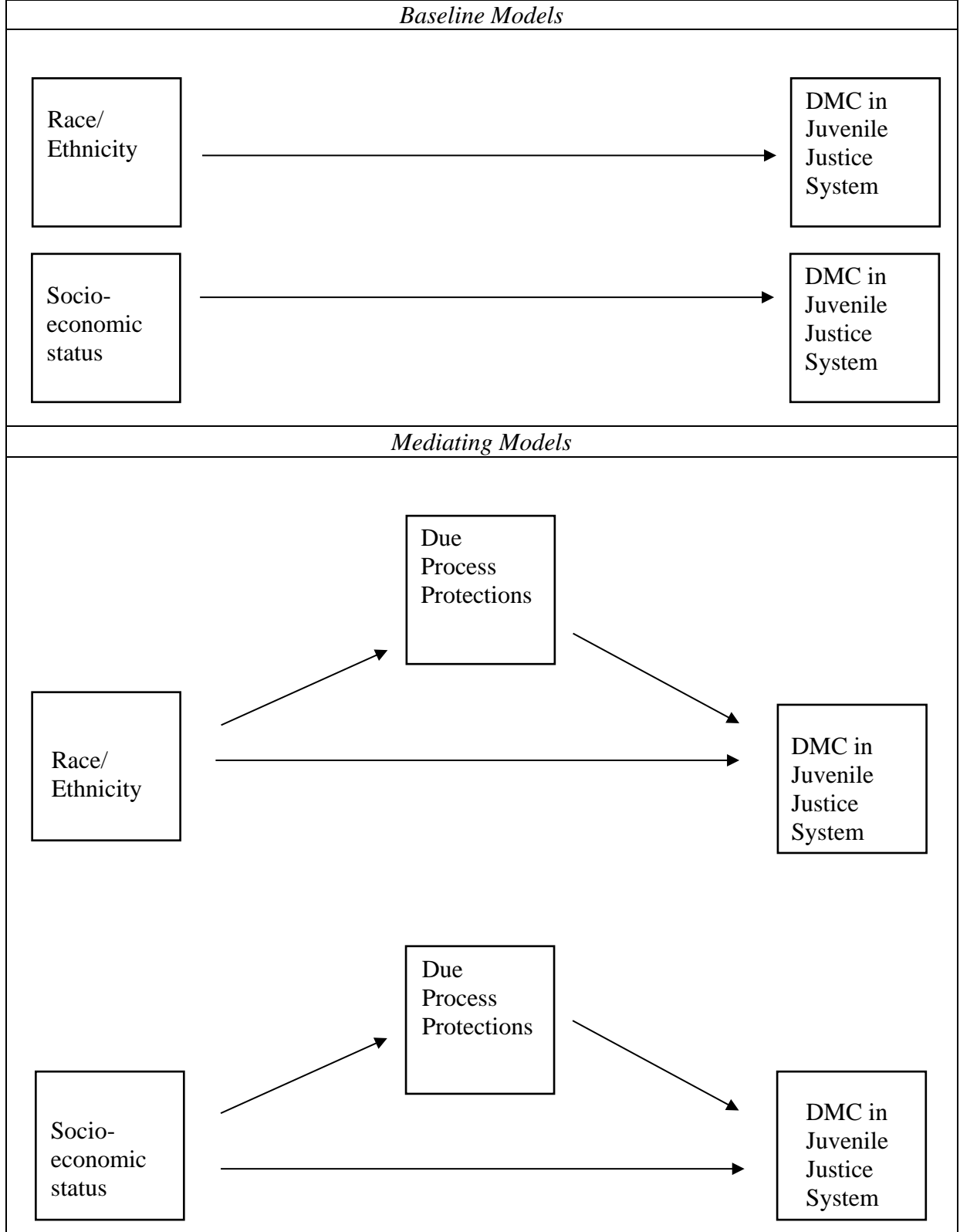
### **Quantitative Analysis**

The quantitative analysis contains univariate, bivariate, and multivariate models to explore the relationships among the variables. The univariate analysis contains descriptive statistics and histograms to identify the central tendencies and distributions of the data for each variable. As illustrated in the results sections below, the univariate analysis dictates the use of negative binomial regression to identify the relationships among the variables. The bivariate analysis serves as the baseline model to determine whether a relationship exists between the demographic composition of a state and the disparate racial/ethnic contact within the juvenile justice system. The multivariate analysis then adds the due process variables to determine whether the protections mediate the initial relationship between the state demographics and disparate contacts. Figure 1 depicts the bivariate and multivariate models.

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<sup>3</sup> Amendments in 2014 changed the sequence of this provision to Ky. Rev. Stat. § 31.110(4).

Figure 1: Models for Quantitative Analysis



The multivariate models contain only three variables to maintain statistical power despite the low N of 34. As a result, the analysis contains univariate analysis of all variables, separate baseline models of the socioeconomic and racial/ethnic composition of states with the disparate contact variables, and then separate multivariate models for each point of contact with the due process protections. The below results section presents the findings from the univariate, bivariate, and multivariate analysis.

## Results

The data analysis contains univariate, bivariate, and multivariate analysis. The univariate analysis looks at frequencies, central tendency, variability, and normality for the due process, state demographic, and rates of contact with the juvenile justice system by race. Based on the univariate analysis, the bivariate and multivariate analysis finds statistical relationships among the variables using negative binomial regress. Bivariate analysis determines whether the variables maintain a statistically significant relationship and the multivariate analysis introduce the role of due process as a mediator of the bivariate relationship. The limitations of available data restrict the multivariate analysis to incorporating three variables to maintain statistical power within the models.

### Data Description

The data used to conceptualize the independent and dependent variables consist of measures for due process protections, state demographics, and disproportionate minority contact with the juvenile justice systems at multiple contact points within the system. The data available allowed for the analysis of 34 states. For each of the 34 states, Table 2 characterizes the central tendency of the data, including the mean, standard deviation, and skewness of each variable.

Table 2: Descriptive Statistics				
	N	Mean	Std. Deviation	Skewness
<b>Due Process Protections</b>				
Right to Counsel Protections	34	4.41	1.940	-0.493
Post-Disposition Advocacy Protections	34	1.53	1.522	0.817
Indigence Determination Protections	34	0.26	0.666	0.957
Waiver of Counsel Protections	34	3.97	2.747	0.284
Total Counsel/Due Process Protections	34	10.18	3.770	0.283

<b>Demographics</b>				
Percent of Population Hispanic	34	12.1118	10.859	1.803
Percent of Population White	34	69.1176	16.702	-0.737
Percent of Population Black	34	8.9794	8.677	1.109
Population Diversity Index	34	0.5540	0.1693	2.362
Percent of Population with a BA or Higher	34	19.3381	3.2648	4.359
Percent Unemployed	34	8.6446	1.968	5.572
Percent of Individuals in Poverty	34	25.1240	2.4844	0.248
<b>DMC-Related Rates (All per 100K)</b>				
Black Arrest Rate	33	4328.0423	10168.106	3.441
Black Delinquency Finding Rate	34	487.1024	567.767	2.821
Black Petition Rate	34	807.9749	703.356	1.799
Black Detention Rate	34	568.3656	481.952	1.122
Black Diversion Rate	34	540.1225	628.789	2.233
Black Confinement Rate	34	68.1338	110.657	2.613
Black Probation Rate	34	379.1754	456.703	1.571
Latino Arrest Rate	34	403.2588	546.408	3.180
Latino Delinquency Rate	34	163.1053	250.552	2.334
Latino Petition Rate	34	252.4001	306.474	1.473
Latino Detention Rate	34	173.4540	192.558	1.871
Latino Diversion Rate	34	189.8373	245.340	3.793
Latino Confinement Rate	34	24.3560	53.338	2.094
Latino Probation Rate	34	120.5989	154.747	0.631
White Arrest Rate	34	299.4985	243.196	1.029
White Petition Rate	34	145.2136	113.327	2.110
White Detention Rate	34	72.2105	65.898	2.579
White Diversion Rate	34	126.1386	104.808	1.220
White Delinquency Finding Rate	34	80.5961	82.279	2.926
White Confinement Rate	34	8.7582	13.363	3.243
White Probation Rate	34	65.1801	74.079	3.537

As established by the qualitative analysis, the due process protections comprise five variables: right to counsel, waiver of counsel, indigence determination, post-dispositional advocacy, and total due process. The mean for the right to counsel variable is 4.41, indicating a central tendency of the 34 states to have a score of 4.41, which resides halfway between the

possible scores of zero through eight. The mean for waiver of counsel is 3.97, meaning the state policies for waiver of counsel have a central tendency of 3.97 on a zero to ten scale. The mean of 3.97 falls below the midway point of five on the scale, indicating fewer protections for waiver are in place among most states included in the analysis. The mean for indigence determination is .26, based on a small scale of negative one to three. The small mean of .26 indicates most states in the analysis have few or no due process protections for youth during the indigency determination. The mean for the post-disposition advocacy variable is 1.53 on a scale of zero to nineteen. The low mean indicates most states in the analysis do not provide many due process protections post-disposition. The total due process score reflects the combined protections of each variable and has a mean of 10.18 on a scale of possible points from negative four to 57. The mean of 10.18 reflects the few due process protections available for youth in state policies among states in analysis.

The demographic variables represent the racial and socio-economic status of each state population. The mean for the percent White is 69.1%. This indicates 69.1% of the population identifies as White on average for the states included in the analysis. This percentage represents the largest demographic for the states as a whole. The mean for the percent Hispanic is 12.1, indicating the average Hispanic population comprises 12.1% of the entire state for the states included in the analysis. The mean for the percent Black rounds to 9%, indicating the states included in the analysis have, on average, 9% of their population identifying as Black. Considered together, the means indicate the states in the analysis have a large percent of their population identifying as White, followed by Hispanic with a much lower percent, and then Black with a slightly lower percentage than Hispanic.

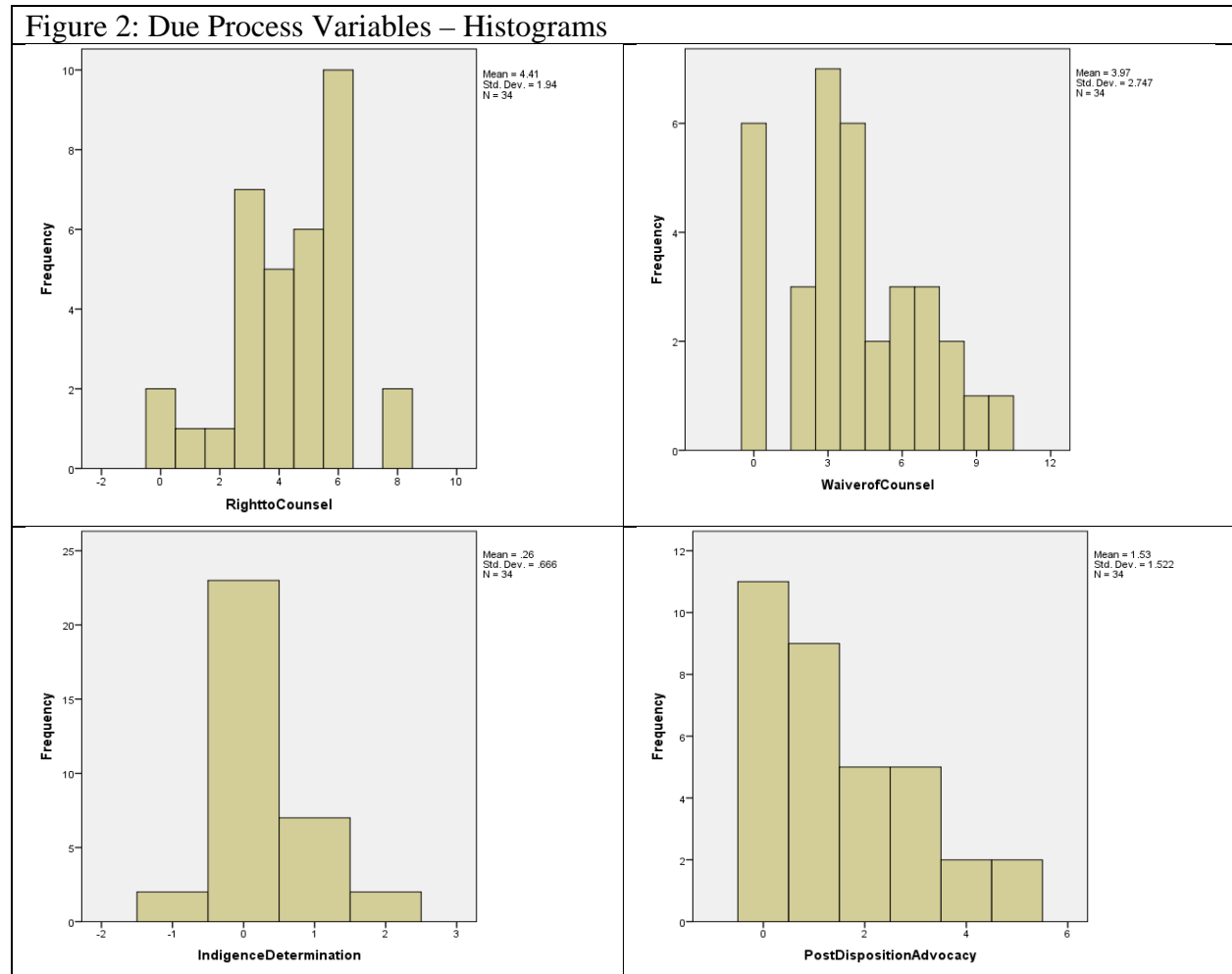


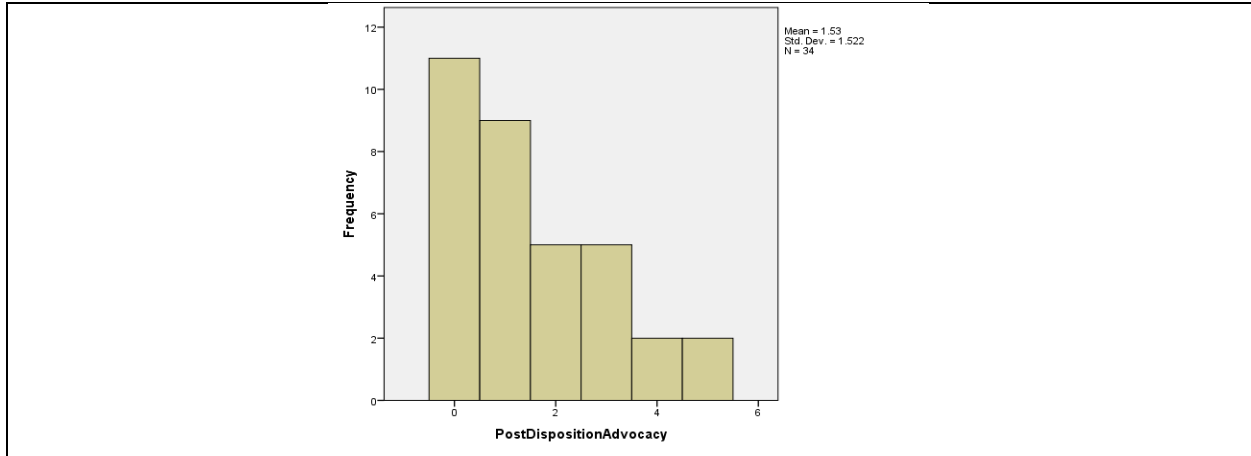
The variables for Disproportionate Minority Contact comprise rates of youth by race as they move through multiple contact points in the juvenile justice system from entrance with arrest to confinement or probation before exiting the system. The rates of contact are all per 100,000 people in the total state population. For Black youth, the mean for arrest rate is 4328.04; the mean for detention is 568.37; the mean for diversion is 540.12; the mean for petition is 807.90; the mean for a delinquent finding is 487.1; the mean for confinement is 68.13; and the mean for probation is 379.17. For Latino/a youth, the mean for arrest rate is 403.26; the mean for detention is 173.45; the mean for diversion is 189.84; the mean for petition is 252.40; the mean for a delinquent finding is 163.11; the mean for confinement is 24.36; and the mean for probation is 379.18. For White youth, the mean for arrest rate is 299.50; the mean for detention is 72.21; the mean for diversion is 126.14; the mean for petition is 145.21; the mean for a delinquent finding is 80.60; the mean for confinement is 8.76; and the mean for probation is 65.18.

The means depict the average rates for the youth among the states included in the analysis. For example, on average, 4328 Black youth are arrested for every 100,000 people living in a state, which serves a comparison point across population demographics, races/ethnicities of youth in the system, and points of contact with the juvenile justice system. States with rates below the mean have fewer Black youth arrested than the average and states above the mean have more Black youth than the average. In the same manner, the means of all contact points for each race/ethnicity allow for comparisons across the variables.

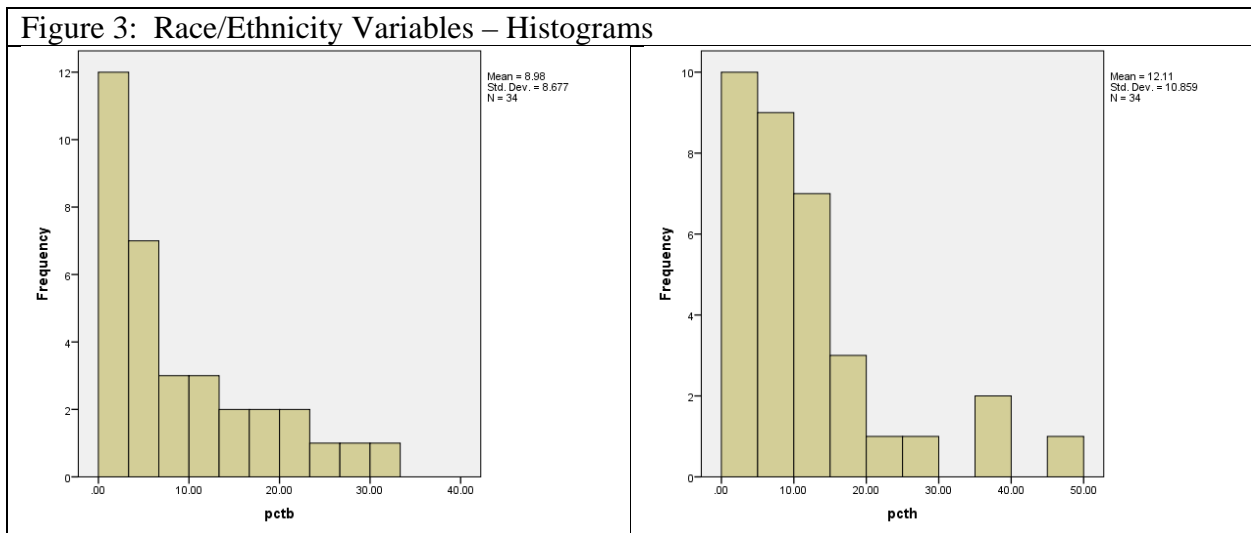
The below histogram figures depict the distribution of each variable. The histograms are grouped by variable type. The due process variables, derived from the qualitative analysis, have normal distributions, as determined by the skewness of each variable. The ideal skewness value for a normal distribution is zero with values between -1 and 1 qualifying as normally distributed.

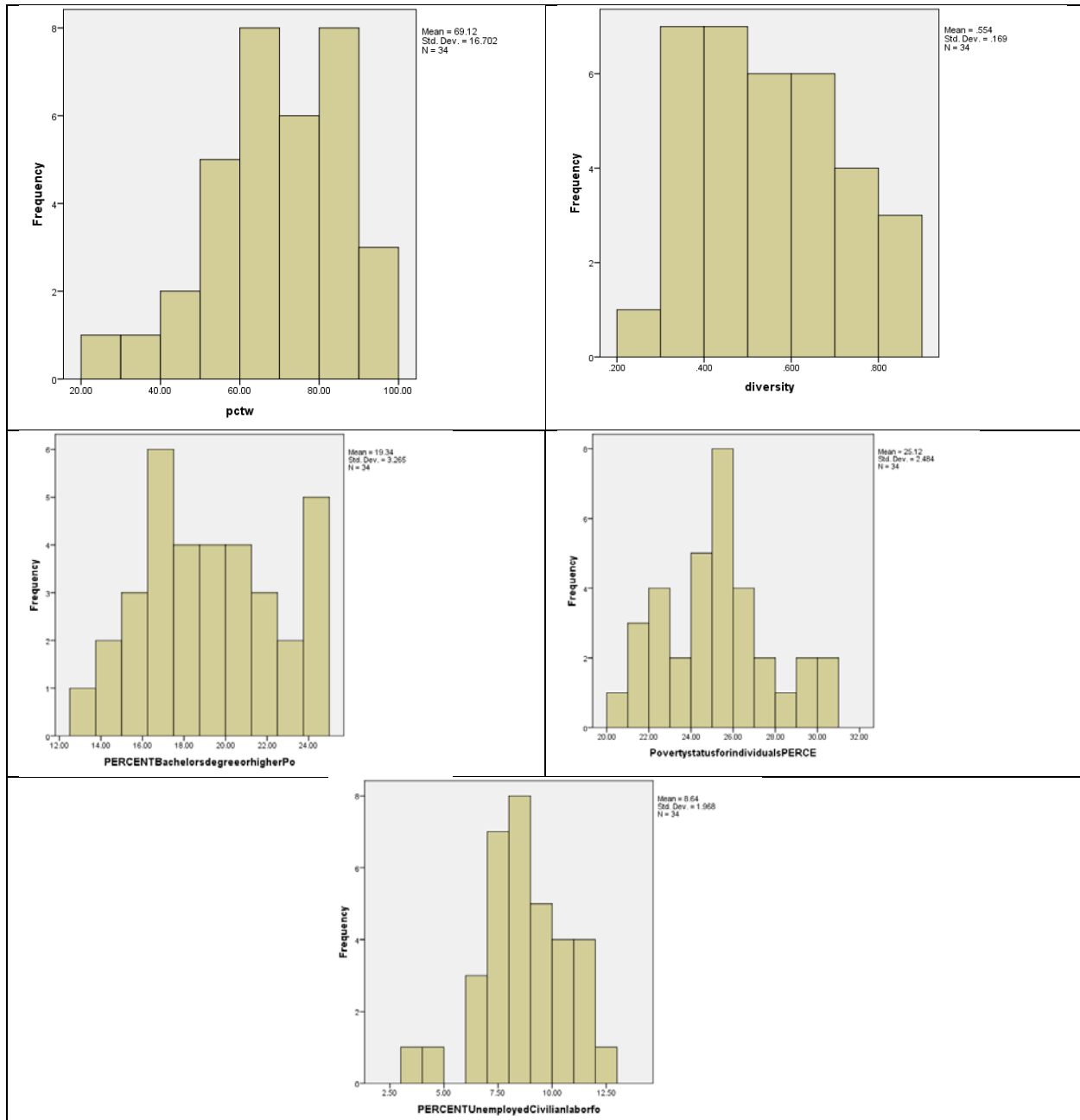
The right to counsel histogram depicts a skewness of -0.493; the waiver of counsel histogram depicts a skewness of 0.284; the indigency determination histogram shows a skewness of 0.957; the post-dispositional advocacy histogram depicts a skewness of 0.817; and the total due process histogram depicts a skewness of 0.283. Each of the due process variables fall within the -1 to 1 range and therefore qualify as normally distributed.





The histograms in Figure 3 depict the distributions for the state demographic variables, including race/ethnicity and socio-economic status. The race/ethnicity variables have mostly a non-normal distribution as depicted by the histograms and identified by the skewness statistic. The percent Black of a state population has a skewness of 1.109. The percent Hispanic of a state population has a positive skewness of 1.803, and the percent White of a state population has a skewness of -0.737. The diversity index, measuring the diversity within a state population, has a positive skewness of 2.362. The skewness statistics indicate the only variable with a normal distribution is the percent White. The other race/ethnicity variables fall outside the -1 to 1 range as positively or negatively skewed beyond normality.

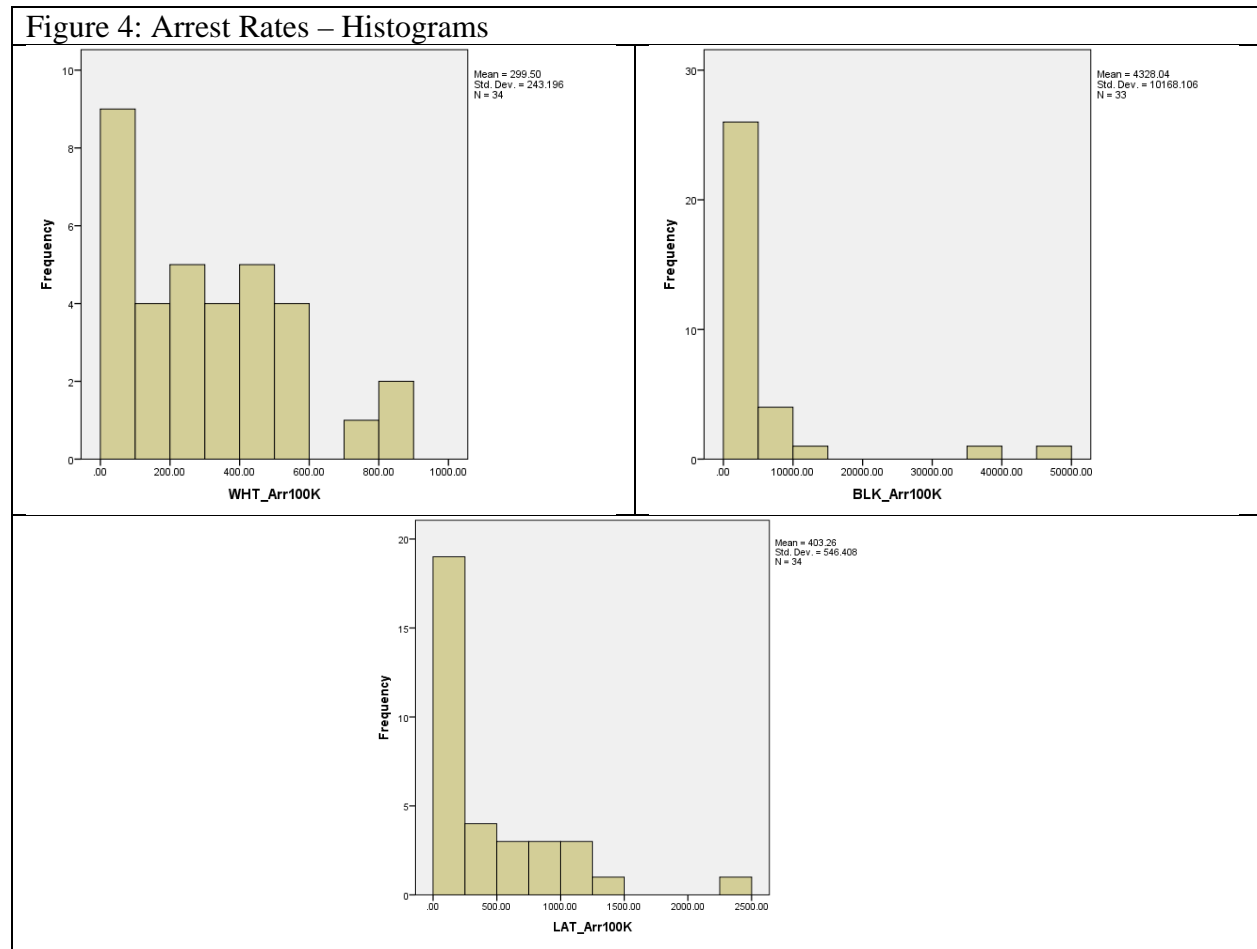




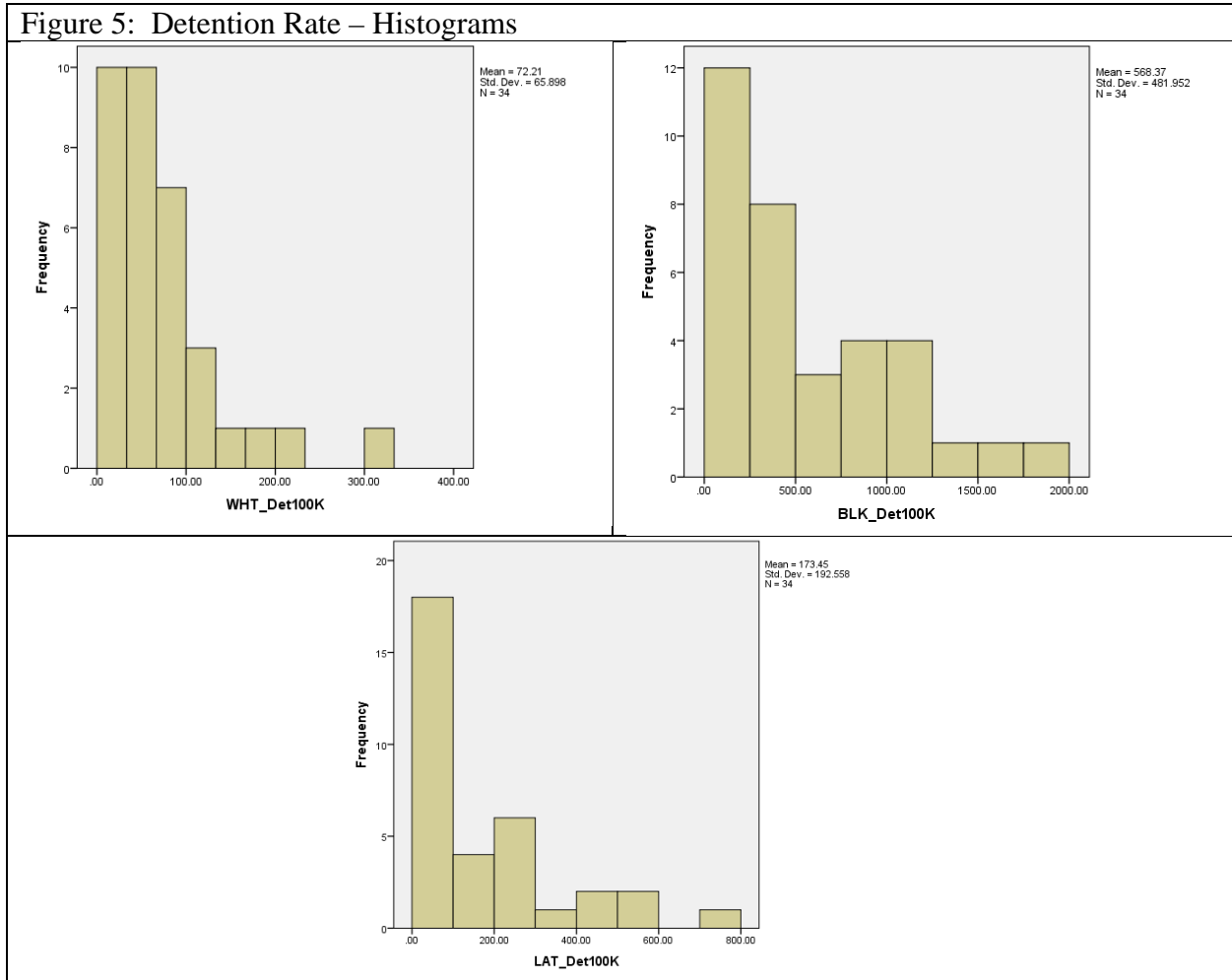
The variables conceptualizing socio-economic status include the percent of the state population holding a Bachelor’s degree or higher, the percent unemployed, and the percent in poverty. The data for higher education has a skewness of 4.359; the data for unemployment has a skewness of 5.572; and the skewness for percent in poverty variable is .248. Of the socio-economic status

variable, only the percent in poverty has a normal distribution. The other variables have positively skewed data disqualifying them from a statistically normal distribution.

The histograms in Figure 4 depict the distributions of the disproportionate minority contact variables. These variables contain data for each contact point in the juvenile justice system by race/ethnicity. The histograms below are grouped by contact point, allowing for comparisons across race/ethnicities. At the arrest contact point, the rate of White arrests has a skewness of 1.029; the rate of Black arrests has a skewness of 3.441; the rate of Latino/a arrests has a skewness of 3.180. All three of these variables are positively skewed with the White arrest rate the closest to a normal distribution; however, all three variables have a non-normal distribution.



The histograms in Figure 5 depict the data for the detention contact point. At this contact point, the skewness for the white detention rate data is 2.579. The skewness for the Black detention rate variable is 1.122, and the skewness for the Latino/a detention rate is 1.871. The positive skewness statistics and histograms illustrate the non-normal distribution of all three variables.



The histograms in Figure 6 depict the data for the diversion contact point. At this contact point, the skewness for the white diversion rate data is 1.220. The skewness for the Black diversion rate variable is 2.233, and the skewness for the Latino/a diversion rate is 3.793. All three of these variables have a positive skew and a non-normal distribution.

Figure 6: Diversion Rates – Histograms

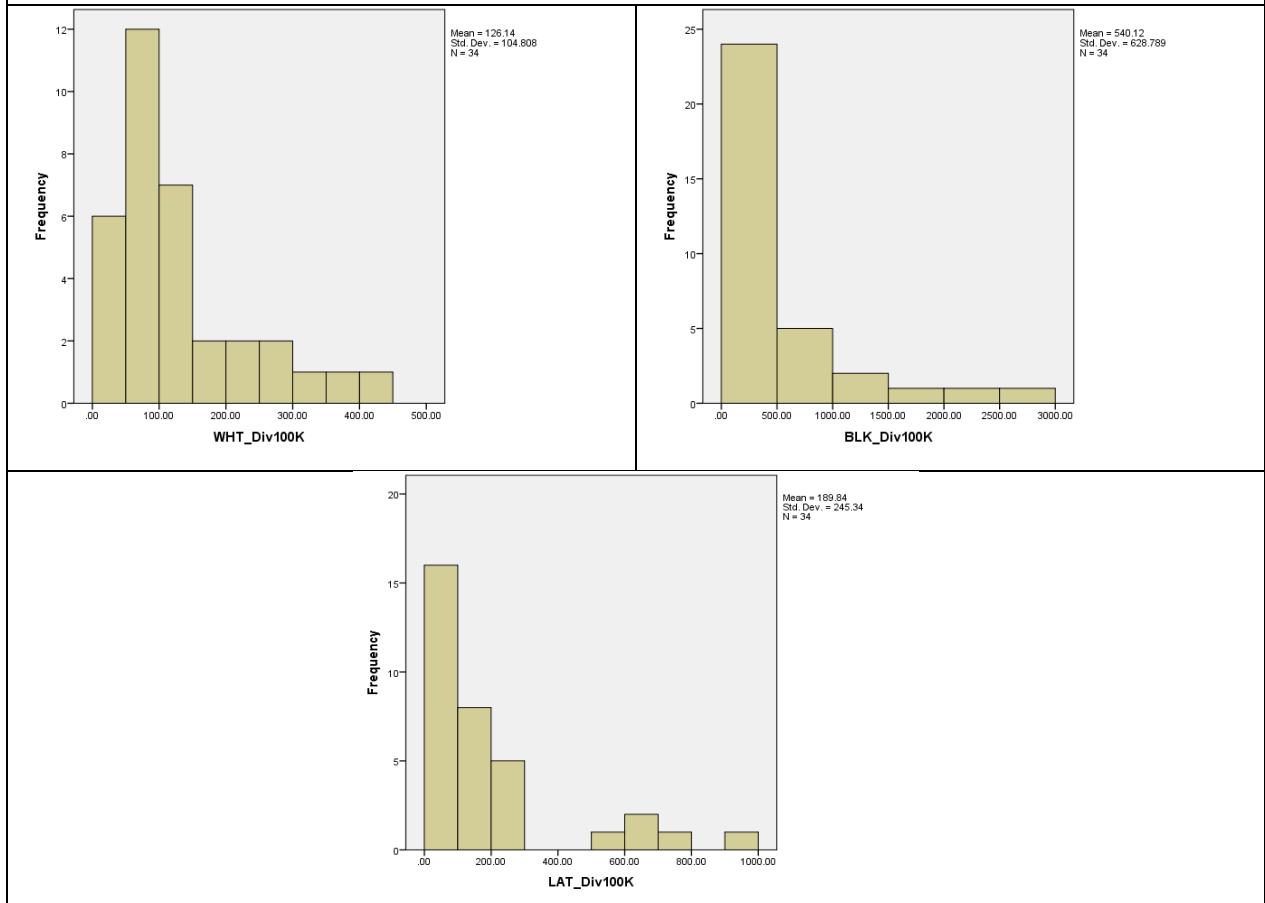


Figure 7 contains histograms showing the distribution of the petition contact point variables. At this contact point, the White petition skewness is 2.110; the Black skewness is 1.799; and the Latino/a skewness is 1.473. All three variables show a positive skewness, contributing to a non-normal distribution.

Figure 7: Petition Rates – Histograms

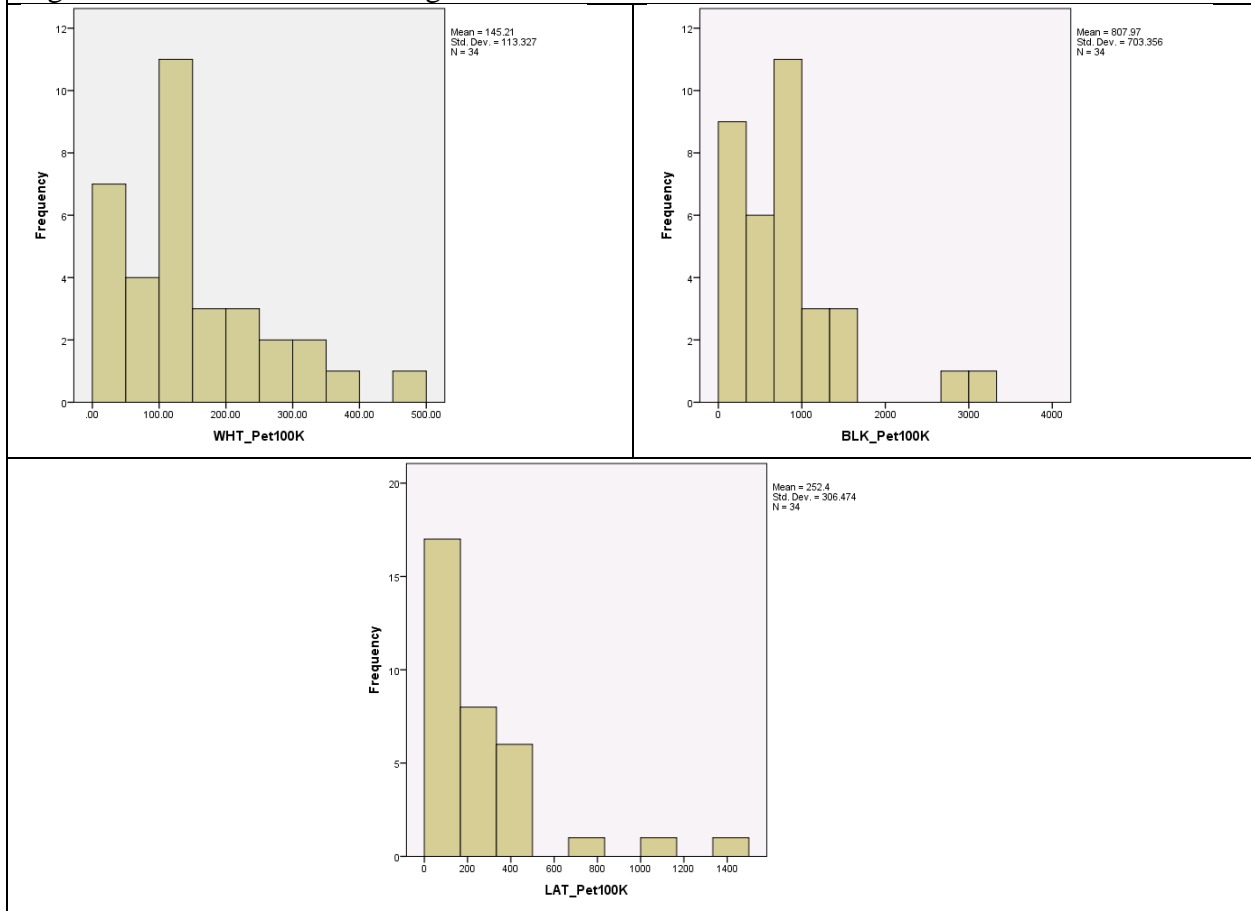
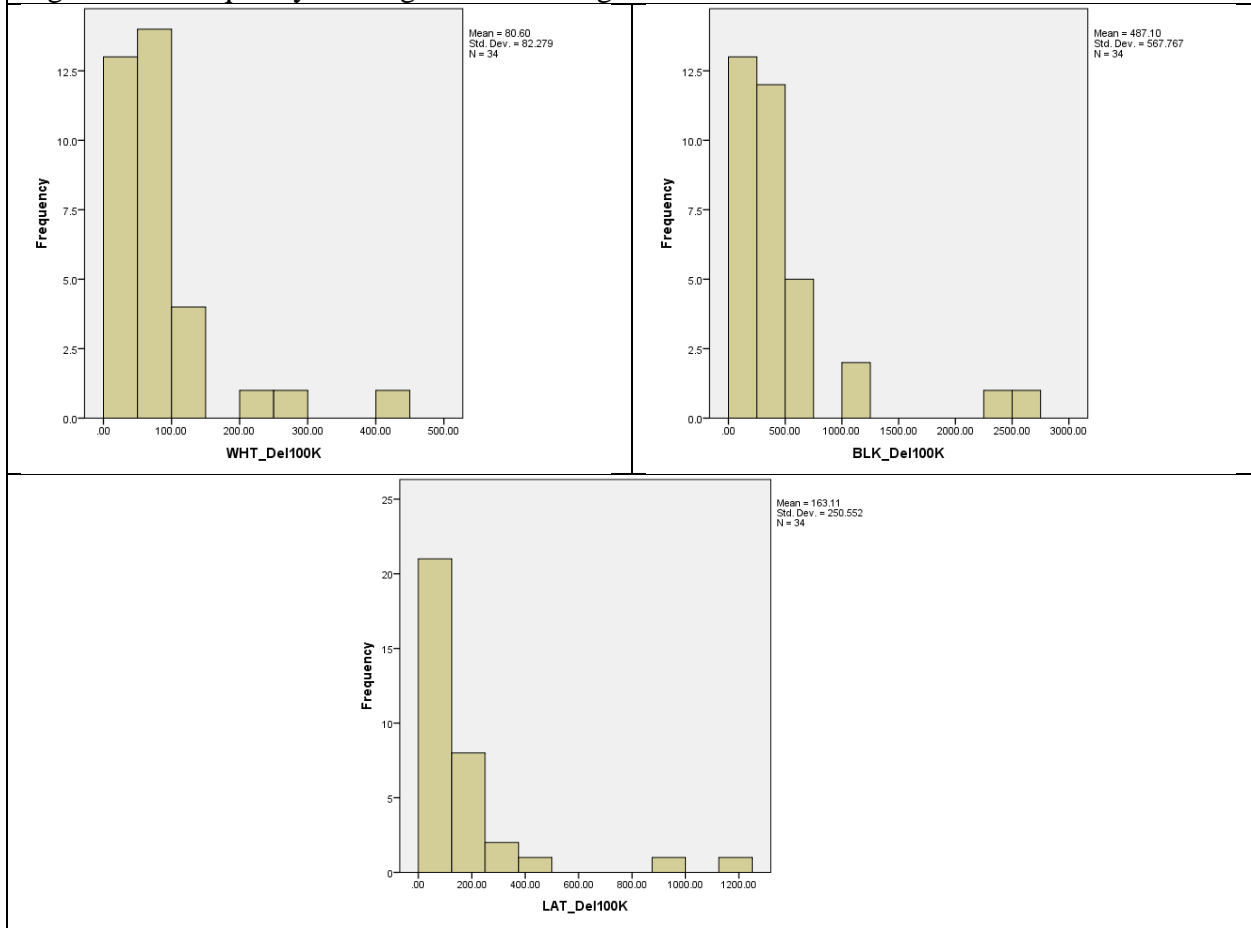


Figure 8 contains histograms for the variables at the delinquency finding point of contact. The histograms depict the rate at which youth receive delinquent adjudications from the court. The white delinquency rate has a skewness of 2.926; the Black delinquency rate has a skewness of 2.821; and the Latino/a delinquency rate's skewness is 2.334. Similar to the other contact-point variables, all three variables have a positive skew and a non-normal distribution.



Figure 8: Delinquency Finding Rates – Histograms



The histograms in Figure 9 depict the confinement point of contact with the juvenile justice system. The White confinement rate has a skewness of 3.243; the skewness statistic for the Black confinement rate is 2.613; and the Latino/a confinement rate statistic for skewness is 2.094. All three have a positive skew, identifying non-normal distributions.

Figure 9: Confinement Rates – Histograms

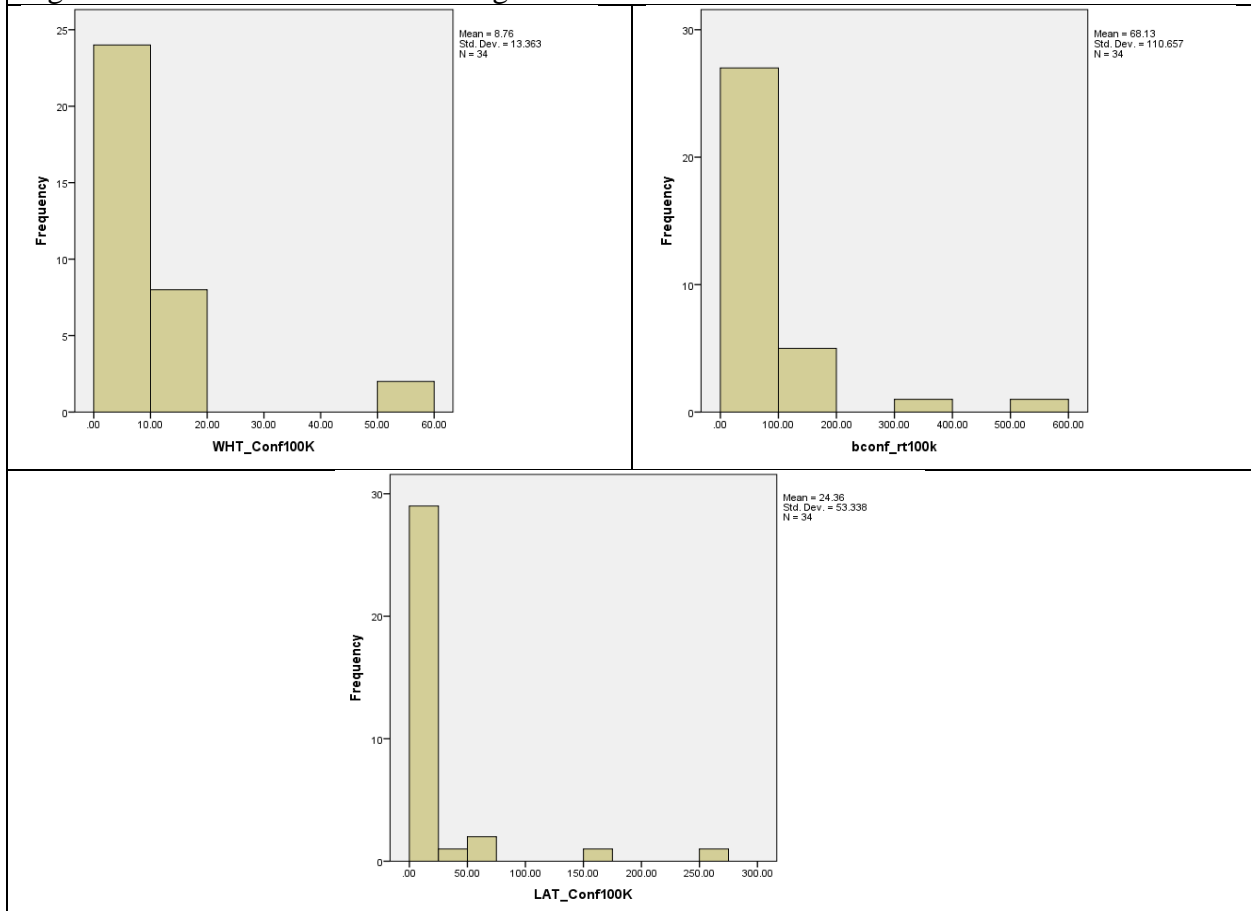
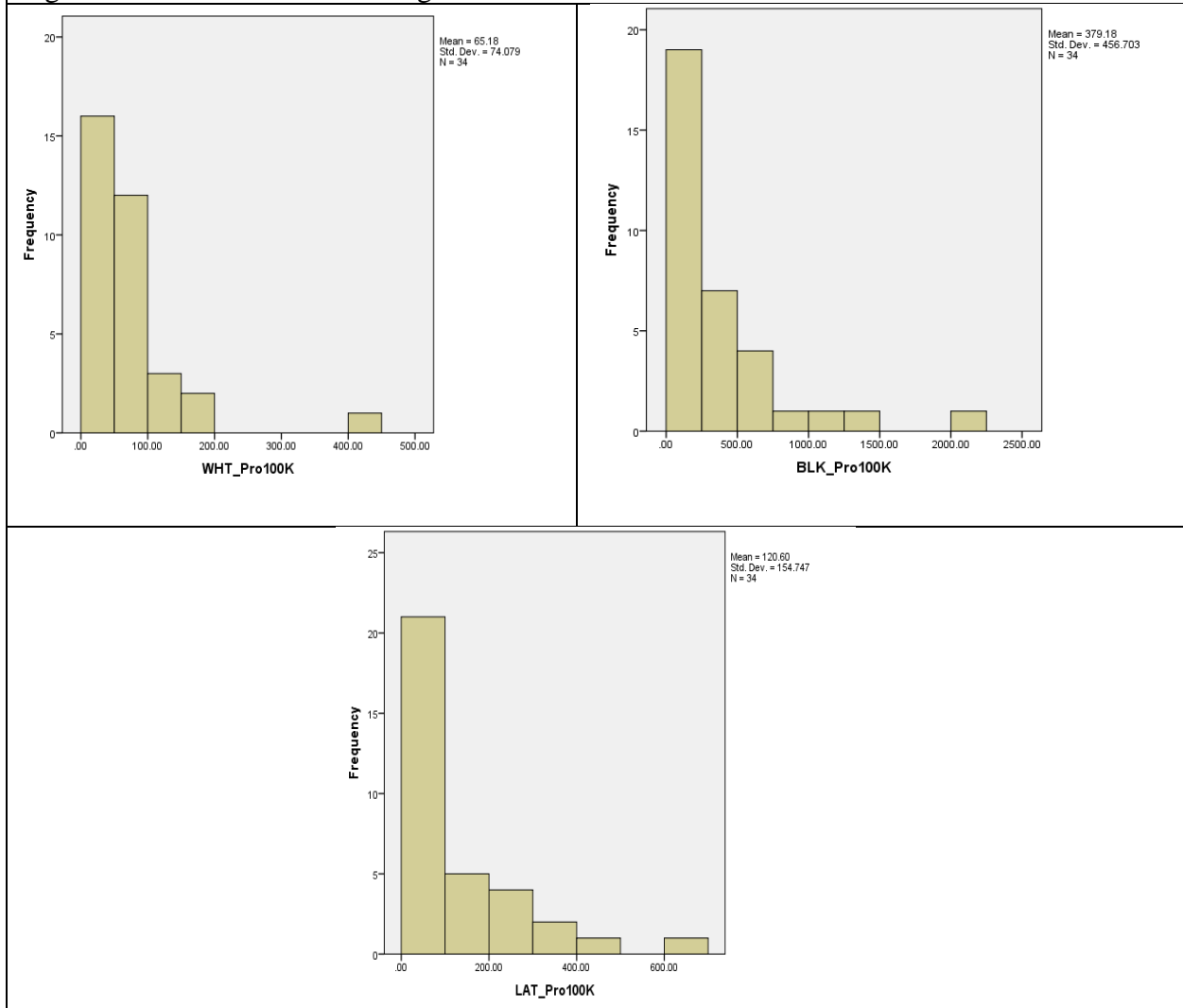


Figure 10 contains the final set of histograms for the contact points with the juvenile justice system, depicting the probation contact point. As depicted in the histograms, the skewness statistic for the White probation rate is 3.537; the skewness of the Black probation rate is 1.571; and the skewness of the Latino/a probation rate is 0.631.

Figure 10: Petition Rates – Histograms



The contact-point (disproportionate minority contact) variables serve in the analysis as the dependent variables, which help direct the quantitative analytic approach. The positively-skewed, non-normal distributions require alternative regression approaches to ordinary least squares (OLS) regression. The use of negative binomial regression best fits the data distribution for the analysis based on the restrictive skewness statistics.

## Statistical Results

Tables 3 through 8 below provide the statistical results from the bivariate and multivariate analysis. Using negative binomial regression, the statistical results demonstrate the relationship among the racial/ethnic composition of state populations, the rate of youth contact with the juvenile justice system, and the mediating impact of due process protections. The analysis also included tests of associations among the socio-economic-status composition of states and the rate of youth contact with the juvenile justice system, yielding no significant relationships. The statistical results of this portion of the analysis is located in Appendix B. The lack of statistical significance in these relationships eliminate the relevance of socio-economic status for the purpose of determining the mediation effect of due process protections. Thus, the remainder of the quantitative analysis will focus on the statistically significant findings from the relationships among race and the juvenile justice system.

Table 3 contains the statistical results for the arrest contact point. The first baseline model looks at the relationship between the White arrest rate for youth and the percent of the state population that identifies as Black. The statistically significant relationship between the two variables produces a coefficient of  $-.0014044$ . This means for every percent Black increase in the state population the White youth arrest rate decreases by  $-.0014044$  per 100,000 people. When the right to counsel variable is added, the relationship remains significant and the coefficient changes to  $-.0014794$ . When the waiver of counsel variable is added to the baseline model, the relationship remains significant and the coefficient changes to  $-.0013914$ . When the indigency determination variable is added to the baseline model, the relationship remains significant and the coefficient changes to  $-.001749$ . When the post-disposition advocacy variable is added to the baseline model, the relationship no longer remains significant and the coefficient changes to -

0.0011915. When the total due process variable is added to the baseline model, the relationship remains significant and the coefficient changes to -.0013334.

Table 3: Arrest Contact Point				
<i>White Arrest Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	*-.0014044	** .0013463	-0.0002785	-0.0001669
Due Process Mediators				
Right to Counsel	*-.0014794	** .0013581	-0.0002084	-0.0000877
Waiver of Counsel	*-.0013914	** .0013296	-0.0003	-0.0001936
Indigency Det	*-.001749	** .0015383	-0.0003731	-0.0002114
Post-Dispo Advocacy	-0.0011915	** .0013349	-0.0003258	-0.0002114
Total Due Process	*-.0013334	** .0013461	-0.0003455	-0.0002189
<i>Black Arrest Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	**-.0001122	-0.0000228	8.05E-06	0.0000106
Due Process Mediators				
Right to Counsel	** .0000403	-0.0000245	*8.33e-06	0.0000108
Waiver of Counsel	**-.0001129	-0.0000249	8.07E-06	0.0000104
Indigency Det	**-.0001117	-0.0000236	*9.45e-06	0.000013
Post-Dispo Advocacy	**-.0001084	-0.000027	8.26E-06	0.0000109
Total Due Process	**-.0001118	-0.0000245	7.32E-06	9.82E-06
<i>Latino/a Arrest Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	** .0006272	** .0006272	-0.000048	0.0000138
Due Process Mediators				
Right to Counsel	**-.0009304	** .0006055	-0.0000205	0.0000371
Waiver of Counsel	**-.0009171	** .0006184	-0.000051	9.59E-06
Indigency Det	**-.0009279	** .0006278	-0.0000478	0.0000137
Post-Dispo Advocacy	**-.0008709	** .0006051	-0.0000523	8.49E-06
Total Due Process	**-.0009178	** .000624	-0.0000512	0.0000104

\*=.05 \*\*=.01

The baseline model depicting the relationship between the White youth arrest rate and the percent of the state population identifying as Hispanic returns a significant relationship with a coefficient of .0013463. This indicates for every percent increase in the Hispanic population of a state the White arrest rate increases by .0013463 per 100,000 people. When the right to counsel variable is added, the relationship remains significant and the coefficient changes to .0013581.

When the waiver of counsel variable is added, the relationship remains significant and the coefficient changes to 0013296. When the indigency determination variable is added, the relationship remains significant and the coefficient changes to .0015383. When the post-disposition variable is added, the relationship remains significant and the coefficient changes to 0013349. When the total due process variable is added, the relationship remains significant and the coefficient changes to .0013461.

The only baseline model that produces a statistically significant relationship is the model encompassing the Black youth arrest rate and the percent of the state population identifying as Black. The baseline model establishes a statistically significant relationship with a coefficient of -.0001122. This means for every percent increase in the Black population in a state the Black youth arrest rate decreases by .0001122 per 100,000 youth. When the due process variable is added, the relationship remains significant and the coefficient changes to .0000403. When the waiver of counsel variable is added, the relationship remains significant and the coefficient changes to -.0001129. When the indigency determination variable is added, the relationship remains significant and the coefficient changes to -.0001117. When the post-dispositional advocacy variable is added, the relationship remains significant and the coefficient changes to -.0001084. When the total due process variable is added, the relationship remains significant and the coefficient changes to .0001118.

Table 4 contains the statistical results for the detention contact point. The first baseline model identifies a statistically significant relationship between the percent of the state population identifying as Black and the White youth detention rate. This baseline model is the only statistically significant relationship between race/ethnicity and the White detention rate. This model produces a coefficient of -.0101135. This means for every percent increase in the Black

population of a state the White detention rate decreases by .0101135 per 100,000 people. When the right to counsel variable is added, the relationship remains significant and the coefficient changes to -.010146. When the waiver of counsel variable is added, the relationship remains significant and the coefficient changes to -.010279. When the indigency determination variable is added, the relationship remains significant and the coefficient changes to -.0103108. When the post-dispositional advocacy variable is added, the relationship remains significant and the coefficient changes to -.0096602. When the total due process variable is added, the relationship remains significant and the coefficient changes to -.010232.

Table 4: Detention Contact Point				
<i>White Detention Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	**-.0101135	0.0020368	0.0005971	0.0008273
Due Process Mediators				
Right to Counsel	**-.010146	0.001689	0.0009244	0.0011081
Waiver of Counsel	**-.010279	0.0020923	0.0005895	0.0008013
Indigency Det	**-.0103108	0.0020819	0.0005868	0.0008302
Post-Dispo Advocacy	**-.0096602	0.0018947	0.0005657	0.0007864
Total Due Process	**-.010232	0.002067	0.0005805	0.0033556
<i>Black Detention Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	**-.0014165	0.0001094	0.0001316	0.0001735
Due Process Mediators				
Right to Counsel	**-.0014146	0.0000701	0.0001631	0.0002037
Waiver of Counsel	**-.0014135	0.0001173	0.0001309	0.0001697
Indigency Det	**-.0015744	0.0001236	0.0001383	0.0001891
Post-Dispo Advocacy	**-.0013443	0.0001003	0.000129	0.0001693
Total Due Process	**-.0013888	0.0001104	0.0001183	0.0001602
<i>Latino/a Detention Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	**-.0036265	0.001225	0.0001743	0.0002869
Due Process Mediators				
Right to Counsel	**-.0036253	0.001138	0.000268	0.0003718
Waiver of Counsel	**-.0036369	0.0012105	0.0001709	0.0002762
Indigency Det	**-.0038385	0.001253	0.0001699	0.0002762
Post-Dispo Advocacy	**-.0034807	0.0011657	0.0001642	0.0002744

Total Due Process	**-.0035941	0.0012196	0.0001607	0.0002724
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\*=.05 \*\*=.01

The percent of the state population identifying as Black also has a significant relationship with the Black detention rate. The baseline model in Figure 1 (above) for the Black youth detention rate establishes a significant relationship with a coefficient of -.0014165. This means for every percent increase in the Black population in a state, the Black youth detention rate decreases by .0014165 per 100,000 people. When the right to counsel variable is added, the relationship remains significant and the coefficient changes to -.0014146. When the waiver of counsel variable is added, the relationship remains significant and the coefficient changes to -.0014135. When the indigency determination variable is added, the relationship remains significant and the coefficient changes to -.0015744. When the variable is added, the relationship remains significant and the coefficient changes to -.0013443. When the variable is added, the relationship remains significant and the coefficient changes to -.0013888.

Further, the relationship between the percent of the state population identifying as Black and the detention rate of Latino/a youth also produces a statistically significant coefficient. The baseline model indicates a statistically significant relationship with a coefficient of -.0036265. This means for every percent increase in the Black population of a state the detention rate for Latino/a youth decreases by .0036265 per 100,000 people. When the right to counsel variable is added, the coefficient changes to -.0036253. When the waiver of counsel variable is added, the coefficient changes to -.0036369. When the indigency determination variable is added, the coefficient changes to -.0038385. When the post-dispositional advocacy variable is added, the coefficient changes to -.0034807. When the total due process variable is added, the coefficient changes to -.0035941.



As depicted in Table 4, the diversion point of contact maintains statistically significant relationships with the percent Blacks in each state also. The rate of White, Black, and Latino diversion rates all produce statistically significant associations with the percent Black of a state. The baseline model for the relationship between the percent Black and White diversion rate results in a statistically significant coefficient of -.0044393. This means for every percent increase in the Black population, the White diversion rate decreases by .0044393 per 100,000 people. When the right to counsel variable is added, the relationship remains significant and the coefficient changes to -.0044492. When the waiver of counsel variable is added, the relationship remains significant and the coefficient changes to -.0044847. When the indigency determination variable is added, the relationship remains significant and the coefficient changes to -.0049866. When the post-dispositional advocacy variable is added, the relationship remains significant and the coefficient changes to -.005715. When the total due process variable is added, the relationship remains significant and the coefficient changes to -.0054232.

Table 4: Diversion Contact Point				
<i>White Diversion Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	**-.0044393	0.0003019	0.0001426	0.0003852
Full Model Mediators				
Right to Counsel	**-.0044492	0.0003072	0.0001871	0.0004252
Waiver of Counsel	**-.0044847	0.000489	0.0001713	0.0004569
Indigency Det	**-.0049866	0.0004012	0.0001604	0.000407
Post-Dispo Advocacy	**-.005715	0.0007246	0.000217	0.0005053
Total Due Process	**-.0054232	0.0004894	0.000217	0.0006687
<i>Black Diversion Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	**-.0008889	-0.0001614	0.0000729	0.0000729
Due Process Mediators				
Right to Counsel	**-.0008942	-0.0001552	0.0000802	0.0001149
Waiver of Counsel	**-.0009059	-0.0001333	0.0000768	0.0001198
Indigency Det	**-.0009392	-0.0001702	0.0000733	0.0001111
Post-Dispo Advocacy	**-.001017	-0.0001083	0.0000837	0.0001264
Total Due Process	**-.0010393	-0.0001577	0.0000983	0.0001407
<i>Latino/a Diversion Rate</i>				

	PCTB	PCTH	PCTW	Diversity
Baseline Model	** -.0020607	0.000942	0.0000294	0.0001198
Due Process Mediators				
Right to Counsel	**-.0020566	0.0009512	0.0000347	0.0001224
Waiver of Counsel	** -.002118	0.0009993	0.000037	0.0001386
Indigency Det	**-.0021388	0.0011807	0.0000364	0.0001277
Post-Dispo Advocacy	** -.0024943	*.0011197	0.0000607	0.0001665
Total Due Process	**-.0023877	0.0010424	0.0001021	0.0002058

\*=.05 \*\*=.01

Similar to the White diversion rate, the Black diversion rate also has a significant relationship with the percent Black population. The baseline model shows a significant relationship with a coefficient of -.0008889. This means for every percent increase in the percent Black population the Black diversion rate decreases by .0008889 per 100,000 people. When the right to counsel variable is added, the coefficient changes to -.0008942. When the waiver of counsel variable is added, the coefficient changes to -.0009059. When the indigency determination variable is added, the coefficient changes to -.0009392. When the post-dispositional advocacy variable is added, the coefficient changes to -.001017. When the total due process variable is added, the coefficient changes to -.0010393.

The Latino/a diversion rate also maintains a significant relationship with the percent Black. The baseline model coefficient is -.0020607, meaning for every one percent increase in the percent Black population the Latino/a diversion rate decreases by .0020607 per 100,000 people. When the right to counsel variable is added, the coefficient changes to -.0020566. When the waiver of counsel variable is added, the coefficient changes to -.002118. When the indigency determination variable is added, the coefficient changes to -.0021388. When the post-dispositional advocacy variable is added, the coefficient changes to -.0024943. When the total due process variable is added, the coefficient changes to -.0023877.

At the petition contact point, only the Latino/a petition rate has a statistically significant relationship with the race/ethnicity population variable of percent Black. As shown in Table 5, the baseline model has a coefficient of -.0013595, meaning for every percent increase in Black population the Latino/a petition rate decreases by .0013595 per 100,000. When the right to counsel variable is added, the coefficient changes to -.0013531, indicating for every percent increase in Black population the Black petition rate decreases by .0013531 per 100,000 people. When the waiver of counsel variable is added, the coefficient changes to -.0014079. When the indigency determination variable is added, the coefficient changes to -.00135. When the post-dispositional advocacy variable is added, the coefficient changes to -.0015212. When the total due process variable is added, the coefficient changes to -.0014868.

Table 5: Petition Contact Point				
<i>White Petition Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	0.0002528	0.0003405	-0.0000496	-0.0000396
Due Process Mediators				
Right to Counsel	0.0003032	0.0003245	0.0000513	0.000034
Waiver of Counsel	0.0000968	0.0006045	-0.0000377	2.01E-06
Indigency Det	0.0000723	0.0003405	-0.0000268	-0.000033
Post-Dispo Advocacy	0.0002747	0.0004714	-0.0000388	-0.000023
Total Due Process	-0.000221	0.0004508	0.00008	0.0001127
<i>Black Petition Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	-0.0003966	0.0000907	0.0000342	0.0000496
Due Process Mediators				
Right to Counsel	-0.0003935	0.0000816	0.0000436	0.0000582
Waiver of Counsel	-0.0004463	0.0001375	0.0000354	0.0000542
Indigency Det	-0.0004	0.0000927	0.0000351	0.0000496
Post-Dispo Advocacy	-0.0004157	0.0001274	0.0000384	0.0000554
Total Due Process	-0.0004939	0.0001151	0.0000484	0.0000665
<i>Latino/a Petition Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	*-.0013595	0.0006328	0.0000152	0.0000648
Due Process Mediators				
Right to Counsel	*-.0013531	0.0006252	0.0000287	0.0000781
Waiver of Counsel	*-.0014079	0.0007406	0.0000167	0.0000709

Indigency Det	*-.00135	0.0006327	0.0000183	0.0000654
Post-Dispo Advocacy	**-.0015212	0.0007582	0.000029	0.0000845
Total Due Process	**-.0014868	0.0007207	0.0000453	0.0001018

\*=.05 \*\*=.01

Table 6 shows the relationships between the delinquency finding contact point (the point at which a youth receives an adjudication of “delinquent”) and the race/ethnicity population variables. For this contact point, the statistically significant relationships occur between the percent Black population with the Black and Latino/a rates of delinquency findings. The coefficient for the relationship between the percent Black population and the rate of Black youth delinquency findings is -.0007085, indicating for every percent Black increase in the population the rate of Black delinquency findings decreases by .0007085. When the right to counsel variable is added, the coefficient changes to -.0007194. When the waiver of counsel variable is added, the coefficient changes to -.0007223. When the indigency determination variable is added, the coefficient changes to -.0007011. When the post-dispositional advocacy variable is added, the coefficient changes to -.000732. When the total due process variable is added, the coefficient changes to -.0007838.

Table 6: Delinquency Contact Point				
<i>White Del. Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	-0.0032286	0.001707	-0.0001058	-0.0000398
Due Process Mediators				
Right to Counsel	-0.0032707	0.0015305	0.0001082	0.0001426
Waiver of Counsel	-0.0033034	0.0018846	-0.0000984	-0.0000147
Indigency Det	-0.0034374	0.0017103	-0.0000908	-0.0000353
Post-Dispo Advocacy	-0.0033565	0.0019896	-0.0000853	-6.19E-06
Total Due Process	-0.0033565	0.0018956	0.000044	0.0001444
<i>Black Del. Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	*-.0007085	0.0001952	0.0000243	0.0000478
Due Process Mediators				
Right to Counsel	*-.0007194	0.0001665	0.000051	0.000071

Waiver of Counsel	*-.0007223	0.0002224	0.0000248	0.0000501
Indigency Det	*-.0007011	0.000202	0.0000233	0.0000475
Post-Dispo Advocacy	*-.000732	0.0002351	0.0000272	0.0000523
Total Due Process	**-.0007838	0.0002189	0.0000383	0.0000651
<i>Latino/a Del. Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	*-.0016465	0.0009001	-0.0000332	0.000013
Due Process Mediators				
Right to Counsel	*-.0016438	0.0008501	0.0000136	0.0000545
Waiver of Counsel	*-.0016767	0.0009633	-0.0000315	0.0000191
Indigency Det	*-.0016367	0.0009013	-0.0000313	0.0000131
Post-Dispo Advocacy	**-.0017987	0.0010314	-0.0000216	0.0000307
Total Due Process	**-.001802	0.0009846	7.70E-06	0.0000629

\*=.05 \*\*=.01

The relationship between the percent Black in the population and the Latino/a delinquency findings rate produces a coefficient of -.0016465. This baseline model shows that every percent increase in Black population results in a .0016465 decrease in the delinquency finding rate for Latino/a youth per 100,000 people. When the right to counsel variable is added, the coefficient changes to -.0016438. When the waiver of counsel variable is added, the coefficient changes to -.0016767. When the indigency determination variable is added, the coefficient changes to -.0016367. When the post-dispositional advocacy variable is added, the coefficient changes to -.0017987. When the total due process variable is added, the coefficient changes to -.001802.

No statistically significant relationships exist between the confinement contact point and any of the race/ethnicity population variables. Table 7 presents the coefficients without a statistically significant relationship.

Table 7: Confinement Contact Point				
<i>White Confinement Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	-0.0128529	0.0099584	-0.0016075	-0.0011622
Due Process Mediators				

Right to Counsel	-0.0129763	0.0086677	-0.0009647	-0.0006245
Waiver of Counsel	-0.013471	0.0102169	-0.0016584	-0.0012169
Indigency Det	-0.0127413	0.0119331	-0.0020212	-0.0014029
Post-Dispo Advocacy	-0.0132582	0.0104615	-0.0015084	-0.0010333
Total Due Process	-0.0128932	0.0101371	-0.001645	-0.0011612
<i>Black Confinement Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	-0.0018814	0.0015258	-0.0003733	-0.000298
Due Process Mediators				
Right to Counsel	-0.0018603	0.0013956	-0.0002596	-0.0181966
Waiver of Counsel	-0.0019117	0.0015482	-0.0003811	-0.0174286
Indigency Det	-0.0019257	0.00179	-0.0004222	-0.0197684
Post-Dispo Advocacy	-0.0019079	0.0015711	-0.0003655	-0.0174153
Total Due Process	-0.0019125	0.0015437	-0.0003677	-0.017348
<i>Latino/a Confinement Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	-0.0040323	0.0036184	-0.0009596	-0.0007914
Due Process Mediators				
Right to Counsel	-0.0039996	0.0033045	-0.0006963	-0.0005784
Waiver of Counsel	-0.004068	0.003696	-0.0009749	-0.0008133
Indigency Det	-0.0040765	0.0039954	-0.0010658	-0.0008633
Post-Dispo Advocacy	-0.0043151	0.0038523	-0.0009278	-0.0007472
Total Due Process	-0.0042631	0.0037443	-0.000902	-0.0007228

\*=.05 \*\*=.01

Table 8 illustrates the statistically significant relationships between the youth probation rate and the racial/ethnic composition of states. The only two baseline models with statistically significant associations are the Black probation rate and the Latino/a probation rate, both with the percent Black population. The coefficient representing the relationship between the Black probation rate and the percent Black population is -.0012607, indicating with every percent increase in the Black population the Black probation rate decreases by .0012607. When the right to counsel variable is added, the coefficient changes to -.0012856. When the waiver of counsel variable is added, the coefficient changes to -.0012592. When the indigency determination variable is added, the coefficient changes to -.0036807. When the post-dispositional advocacy

variable is added, the coefficient changes to -.0011857. When the total due process variable is added, the coefficient changes to -.0012744.

Table 8: Probation Contact Point				
<i>White Probation Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	0.0003981	0.0003981	0.0005957	0.0008717
Due Process Mediators				
Right to Counsel	-0.0055922	-0.0000204	0.001048	0.0012576
Waiver of Counsel	-0.0052473	0.0003314	0.00059	0.0008357
Indigency Det	*-.0064004	0.0004028	0.0006611	0.0009156
Post-Dispo Advocacy	-0.004565	0.000253	0.0005687	0.0008369
Total Due Process	*-.005531	0.000419	0.0005896	0.0008543
<i>Black Probation Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	**-.0012607	0.0001111	0.0001122	0.0001665
Due Process Mediators				
Right to Counsel	**-.0012856	0.0000484	0.0001639	0.0002163
Waiver of Counsel	** -.0012592	0.0001173	0.0001117	0.0001615
Indigency Det	**-.0012522	0.0001124	0.0001118	0.0001665
Post-Dispo Advocacy	**-.0011857	0.0001111	0.0001083	0.0001617
Total Due Process	**-.0012744	0.0001196	0.000102	0.0001569
<i>Latino/a Probation Rate</i>				
	PCTB	PCTH	PCTW	Diversity
Baseline Model	**-.0036876	0.0013915	0.0001541	0.0003151
Due Process Mediators				
Right to Counsel	**-.0036934	0.0013023	0.0002672	0.0004141
Waiver of Counsel	** -.0036925	0.0014291	0.0001481	0.0003003
Indigency Det	**-.0036807	0.0014061	0.0001672	0.0003216
Post-Dispo Advocacy	**-.0035117	0.0014054	0.0001408	0.0002992
Total Due Process	**-.0037072	0.00144	0.0001479	0.0003118

\*=.05 \*\*=.01

The relationship between the percent Black population and the Latino/a probation rate produces a statistically significant coefficient of -.0036876. When the right to counsel variable is added, the coefficient changes to -.0036934. When the waiver of counsel variable is added, the coefficient changes to -.0036925. When the indigency determination variable is added, the coefficient changes to -.0036807. When the post-dispositional advocacy variable is added, the

coefficient changes to  $-.0011857$ . When the total due process variable is added, the coefficient changes to  $-.0037072$ . A discussion of the results follows in the next section.



## **Discussion**

Overall, the predominant finding from the analyses presents a significant relationship between the percent Black population in a state and the rates of contact with the juvenile justice system for youth. The percent Black population maintains a statistically significant relationship for the rate of contact among White, Black, and Latino/a youth at multiple contact points across the system. The percent Hispanic population only has a statistically significant relationship with the arrest rate for White and Latino youth, while the percent White population, racial/ethnic diversity index, and all socioeconomic status measures do not have statistically significant relationships with juvenile justice system contact rates. When the due process protections factor into the models as potential mediating variables, the findings indicate many of the due process protections decrease the rates of contact, across all three race/ethnicities – White, Black, and Latino/a. In a few instances, the introduction of due process mediating factors increases the rate of contact between youth and the juvenile justice system.

### **Racial/Ethnic Population Demographics and Rates of Contact**

The findings indicating the prevalent relationships between the population racial/ethnic demographics and contact rates with the juvenile justice system illustrate the impact of larger populations of Black people in a state on the administration of justice for youth; but also, the relationships serve as a comparison point for understanding the role of defense counsel in decreasing rates of youth contact with the juvenile justice system. The percent Black of a state population has a statistically significant relationship on the contact rates of all three racial/ethnic groups examined in this project: White, Black, and Latino. The percent Black has the most frequent association with the contact rates of Latino/a youth. The percent Black of a state

population decreases the Latino/a contact rates at five contact points: detention, diversion, petition, delinquency finding, and probation, while increasing the contact rate for Latino youth at arrest. Similarly, the percent Black has an association with the rates of Black youth contact with the juvenile justice system, decreasing contact at all five significant contact points: arrest, detention, diversion, delinquency finding, and probation. With less frequency, the percent Black of a state population has an association with White youth contact, decreasing the contact rates at arrest, detention, and diversion. The percent Hispanic of the state population has an association with only the White and Latino arrest rates. Table 9 depicts these associations. The findings show the stand-out relationship between the percentage of the Black population and the contact rates of Black and Latino youth throughout the juvenile justice system process.

Population Demographic	DMC Demographic	JJ System Contact Point	Directional Impact on Rate
Percent Black	White	Arrest	-
		Detention	-
		Diversion	-
	Black	Arrest	-
		Detention	-
		Diversion	-
		Delinquency Finding	-
		Probation	-
	Latino	Arrest	+
		Detention	-
		Diversion	-
		Petition	-
		Delinquency Finding	-
		Probation	-

Percent Hispanic	White	Arrest	+
	Latino	Arrest	+
Percent White	All	None	N/A
Diversity Index	All	None	N/A

### **Defense Counsel Policies as Mediators**

State policies on defense counsel predominately have a partially mediating role between the state racial/ethnic population demographics and the differences in contact rates with the juvenile justice system. Regarding the statistically significant relationships identified between the state population demographics and contact rates, the defense counsel policies most frequently (although not always) decrease the rate of contact of youth with the juvenile justice system. The percent Black and percent Hispanic maintain the only statistically significant relationships upon the introduction of due process protections. The relationship between the percent Hispanic and contact rates with the juvenile justice system only remain significant at the arrest point of contact for White and Latino/a youth. This is a curious association because the protections of defense counsel most often apply later in the juvenile justice process. This may indicate an indirect impact of having greater or earlier defense counsel protections throughout the duration of the justice process. When defense counsel policies provider higher levels of due process protections, these arrest rates increase for White and Latino youth. These are the only relationships outside the percent Black that maintain statistical significance, so the remainder of the discussion focuses on the partial mediation of the defense counsel policies on the relationship between the percent Black and the contact points for Black, Latino, and White youth throughout the juvenile justice system. Table 10 depicts these relationships.

Population Increases	DMC Race/Ethnicity	JJ System Contact Point	Directional Impact	(Partial) Mediation by Right to Counsel	(Partial) Mediation by Waiver of Counsel	(Partial) Mediation by Indigency Determination	(Partial) Mediation by Post-Dispositional Representation	(Partial) Mediation by Total Due Process	
Percent Black	White	Arrest	-	-	+	-	Fully Mediates	+	
		Detention	-	-	-	-	+	-	
		Diversions	-	-	-	-	-	-	
	Black	Arrest	-	+	-	+	+	+	
		Detention	-	+	+	-	+	+	
		Diversions	-	-	-	-	-	-	
		Delinq. Finding	-	-	-	+	-	-	
		Probation	-	-	+	+	-	-	
	Latino	Arrest	+	-	-	-	-	-	
		Detention	-	+	-	-	+	+	
		Diversions	-	+	-	-	-	-	
		Petition	-	+	-	+	-	-	
		Delinq. Finding	-	+	-	+	-	-	
		Probation	-	-	-	+	+	-	
	Percent Hispanic	White	Arrest	+	+	-	+	-	-
		Latino	Arrest	+	-	-	+	-	-

The percent Black population has an association with the rates of White, Black, and Latino/a youth contact with the juvenile justice system, as noted above. These relationships are partially mediated (and fully mediated in one instance) by five types of defense counsel policies: right to counsel, waiver of counsel, indigency determination, post-dispositional representation, and the total due process provided by the categories identified in this project.

The state policies on right to counsel partially mediate the impact of the percent Black population in a state. As the percent Black rises, the rates of White youth contact with the system at arrest, detention, and diversion decrease. Increasing the protections of right to counsel policies further decreases at all three of the contact points for White youth. The impact of protective defense counsel policies expands for Black youth. The increase in protective right to counsel policies associate with a decrease in Black youth contact at diversion, delinquency findings, and probation; however, these policies correlate with increases in the rates at arrest and detention. This may reflect the role of the courts, through which defense counsel provisions have the greatest protections for clients. Arrest and detention decisions often reflect the decision and information-gathering of police, whereas diversion, delinquency findings, and probation include defense counsel and prosecutor. A similar pattern emerges for Latino/a youth; right to counsel protections decrease initial rates of contact at the detention, diversion, petition, delinquency, and probation contact points in the system, while contact rates increase at arrest. Despite the increases early in the system process, the policies for right to counsel most frequently partially mediate the contact rates associated with the percent Black in the population by further decreasing the contact rates farther into the system.

Waiver of counsel partially mediates the demographic impact by further decreasing the rate of contact for White, Black, and Latino/a youth at multiple contact points. In comparison to the initial association between percent Black and rates of contact, the policies providing protections for youth involving waiver of counsel decrease for White youth at the detention and diversion points; Black youth at the arrest, diversion, and delinquency points; and at detention, diversion, petition, delinquency findings, and probation points for Latino/a youth. Waiver of

counsel protections partially mediate rates of contact by increasing White arrest rates, Black detention rates, and Black probation rates.

Indigency determinations that have greater protections from state policies decrease the contact rates established by the initial association between percent Black in a population and the White youth in the juvenile justice system. The partial mediation by the indigency determination policies decreases the rates of White contact at arrest, detention, and diversion points. The mediation does not increase the rates at any point. For Black youth, indigency determination policy protections decrease rates from the initial association at detention and diversion points, but increases the rates at arrest, delinquency, and probation points. The findings for Latino/a youth follows the same pattern; the protections for indigency determinations decrease rates at arrest, detention, and diversion, but increase rates at petition, delinquency, and probation.

Protections in state policies for post-disposition representation offer the only fully mediating relationship with contact points in the juvenile justice system. The White arrest rate is fully mediated with stronger protections for post-dispositional advocacy. Interestingly, this finding connects protection farther in the juvenile justice system process (i.e., protections while under correctional supervision, post-court-processing) with the early contact point of arrest. The additional mediations consist of partial mediation. For White youth, the post-disposition protections also decrease diversion rates but increase probation rates. The protective policies for post-dispositional advocacy decrease the arrest and detention rates, but increase the diversion, delinquency, and probation findings, for Black youth. For Latino youth, post-dispositional advocacy protections decrease arrest, diversion, petition, and delinquency finding rates, in addition to increasing detention and probation rates.

The “total due process” protections sum the protections for access to defense counsel provided by the other categories. This overall measure offers a single large-scope capture of the protections for access to defense counsel in state policies. The total due process protections in state policies partially mediate the White, Black, and Latino/a contact rates with the juvenile justice system. The White youth arrest rate increases, but the rates of detention and diversion decrease. The Black arrest and detention rates increase, while the rates of diversion, delinquency, and probation decreased. For Latino youth, the detention rate increases, but the arrest, diversion, petition, delinquency, and probation rates decrease.

Overall, the protections for waiver have the greatest association with decreasing contact with the juvenile justice system for White, Black, and Latino/a youth and “total due process” offers the second. The waiver to counsel policies provide a second layer of protection of the right to defense counsel after the provision of counsel, by reducing the likelihood youth will unintentionally or unintelligently waive counsel. The stronger protections for waiver of counsel may associate with greater access to counsel, which then decrease the continued contact with the justice system for youth. This could have an impact on the percentage of Black and Latino youth who face disparate probabilities of contact with the juvenile justice system by providing them with an advocate to counter systemic biases against the youth as they move through the system. The total due process protections have the second strongest association with decreasing contact with the system. This likely relates to the totality of the variable in summing the protections into a single measure, encompassing the widest range of protections throughout the entire system’s process.

The policies surrounding the indigency determination have the weakest impact on decreasing the contact rates. This may reflect the indigency process as a gateway to receiving

counsel but also the least impactful in relation to legal protections from counsel once appointed. The indigency process does not impact the duration or responsibilities of defense counsel; it only allows for the appointment of counsel at the typical time of appointment for each state. The indigency process lacks the variation across states also, which may limit its impact across state contact rates. The financial determination may align more closely with socioeconomic factors, which contained no statistical significance in the relationship examined in this dissertation.

The contact point of diversion, in the data set defined as when youth are “sent to a facility in lieu of adjudication as part of a diversion agreement” (Haywood Burns Institute), shows the most consistent decreases across all races/ethnicities when due process protections increase. This may reflect the lack of representation by defense counsel at the point when youth take a plea deal that diverts them from the court system (although it places them in the corrections system), and the availability of counsel may encourage youth to go through the adjudication process. The consistent decreases could also represent the small percent of youth who qualify as “diverted” in the data set; the data captures the youth who enter into juvenile facilities without delinquent adjudications, which comprises a very small proportion of youth in the facilities, and likely who divert out of the justice system all together (Haywood Burns Institute).

Overall, a few consistent patterns emerge from the data. Most predominately, the percent Black has the strongest associations with the rates of contact with the juvenile justice system for all three racial/ethnic groups – White, Black, and Latino/a. Beyond arrest rates, it is the only racial/ethnic indicator to impact contact rates across the juvenile justice system, including detention, diversion, petition, delinquency findings, and probation. The state policy protections for defense counsel have a mediating role for the relationships that already exist between the population demographics and the contact rate demographics. The defense counsel protections



that most consistently mediate to decrease the relationship between the population demographics and contact rate demographics are “total due process” and waiver of counsel. The contact point that most consistently has a mediated relationship with population demographics through defense counsel protections is diversion for White, Black, and Latino youth.

### **Policy Implications**

The policy implications for this study must also take into consideration the identified limitations discussed below; however, the patterns emerging from the analysis direct a few policy implications. The primary findings in this study align with prior research on disproportionate minority contact in the juvenile justice system and the adult criminal justice system. The percent Black of a population has the most consistent and numerous associations with contact with the juvenile justice system. This includes the contact Black, White, and Latino youth have with the juvenile justice system; however, most predominately, the percent Black in a population impacts the contact of Black and Latino/a youth in the juvenile justice system. This finding supports the findings of other disproportionate minority contact studies and data analysis on the juvenile justice system in which Black youth have the greatest disparate contact rate in comparison to all other racial/ethnic groups.

The federal government recognizes the ongoing disparate contact of Black youth with the juvenile justice system and maintains the continued study of Disproportionate Minority Contact as a core component of the primary piece of federal legislation: The Juvenile Justice Delinquency Prevention Act (JJDP). The JJDP core component addressing this issue does not contain strong requirements for states to identify or address racially disparate contacts in each state. Stronger federal requirements may encourage states to investigate disparity with the

juvenile justice system. The findings from this study add to the evidence that disparities in the juvenile justice system extend beyond a single contact point and have a complex relationship to the larger population demographics within which the system operates. A stronger mandate in the Juvenile Justice Delinquency Prevention Act for the identification and study of racial/ethnic disparities in states would help to address the disparity and reasons for the disparity.

Of note, the Juvenile Justice Delinquency Prevention Act initially introduced the “DMC” core component when the acronym stood for disproportionate minority confinement (Office of Juvenile Justice Delinquency Prevention). The acronym then expanded to stand for disproportionate minority contact, acknowledging that the disparity exists at all contact points. In this study, confinement stood out as the only contact point without any significant associations to state population demographics. The qualitative analysis found states with limited defense counsel protections provide, at the very least, representation at adjudication when the disposition may be confinement. Highlighting confinement as a point of contact worthy of receiving additional attention – both during the court process for individual youth and systemically by the federal government – may contribute to the lack of statistically significant findings in this study. If true, this further encourages the expansion of federal support for identifying and addressing disparity at all contact points and the protection of access to defense counsel in state policies.

Currently, not a lot of research exists regarding defense counsel in delinquency courts. Of the current body of research, most identify variation in the harshness of dispositions as the primary impact of defense counsel. In juvenile court, defense counsel serves to uphold the due process rights of youth. In this role, defense counsel advocacy may have a larger impact on the functioning of the juvenile justice system. The findings in this study indicate differences in the rates of contact of youth with the juvenile justice system in relation to improved protections for

defense counsel. More specifically, in more instances than not, defense counsel decreases the rate of system contact for Black and Latino/a youth – the same youth who experience disparate contact with the system.

The findings in this study support the expansion of state policies that protect the role of defense counsel as an adversarial advocate for youth in juvenile delinquency court. The introduction of policies protecting defense counsel have an association with decreased rates of contact across the juvenile justice system in a manner that predominately further reduces contact for Black and Latino/a youth beyond reductions associated with state racial/ethnic demographics. Further, these findings identify additional outcomes of defense counsel in juvenile delinquency court beyond meeting constitutional rights of youth. While the primary role of defense counsel continues to be upholding youth rights, evaluations of defense counsel policies can encompass broader outcomes than the current research contains, including the impact on disparate rates of contact for minority youth in the juvenile justice system.

## **Limitations**

As an exploratory study, the methodology, and consequently the findings, contain many limitations. The arduous work of qualitative data collection for the state statutes, case law, and court rules consists of looking into the policies of each state and tracing the laws through various sections of code, rules, and case law decisions. This process subjects itself to human error despite best efforts to encompass all policies related to the provision of defense counsel in juvenile delinquency court. Similar human error may be found in the original collection of the quantitative data measuring contact with the juvenile justice system. The disproportionate

minority contact data is limited in scope and may contain errors in counts, definitions of procedural points, and identification of races/ethnicities.

The study relies on the limited data available. The N for the quantitative portion of the study is 34 because only 34 states report enough DMC data to comprise a state-level analysis. Further, this study only looks at relationships within a single-year timeframe. The available DMC data and juvenile defense policy data dictated 2013 as the most recent year of data available for both the DMC and defense policies. To expand this timeframe into past years would have necessitated entirely new data collection for the qualitative state policies, and, depending on the year, a reduction in the N due to fewer states reporting DMC data. The states reporting DMC data may self-select based on systematic differences among states in a manner that directly impacts the analysis of this study. The study presents an exploratory study on the relationships among state populations, state policies, and disparate outcomes for youth in the juvenile justice system. Further research with, at the very least, additional states and years of data would reduce the limitations of this study.

### **Future Research**

Future research may extend this exploratory study in many directions. Expanding the data collection into future years for juvenile defense policies and racial/ethnic contact with the justice system would allow for a more thorough analysis and the opportunity to measure change over time. These potential studies, as well as the current one, would also benefit from racial/ethnic contact data from additional states. Additional data on racial/ethnic contacts may also allow for a hierarchical analysis, inquiring into the relationship between county-level racial/ethnic,

socioeconomic status, and racial/ethnic contact rates with the state-level defense counsel policies.

The qualitative analysis of the defense counsel policies resulted in five variables for analysis in this study; however, each variable contained multiple coded policy components to create the final variable code. For example, the waiver of counsel contained a standard for informed waiver, waiver of counsel in writing, and a court hearing on the waiver, among other components. Future research may look into each of the components to see if a specific one has an association with the racial/ethnic contact rates at different points within the juvenile justice system.

The current study also directs two specific lines of inquiry resulting from the findings. A slight division appears in the findings between the impact of defense counsel policies on contact points prior to a court petition and contact points after a court petition. The timing of defense counsel appointment differs across states, frequently after petition. A further inquiry into the impact of defense counsel based on timing of appointment that divides findings into before- and after-appointment merits analysis.

The findings in this study also show a large impact on diversion. In juvenile justice policy, diversion often refers to the multiple pathways out of the juvenile justice system entirely without sending youth to facility lock-ups. This study relies on the OJJDP diversion contact point as defined by NCJRS, which encompasses only youth who “divert” out of the system into a secure facility. Information on the youth who who divert out of the system entirely pre-adjudication, without going to a secure facility, would increase the knowledge on the impact of defense counsel, the racial/ethnic rates of contact with the system, and the disparity of contact.

Diversion decisions often reside with the prosecutor or the intake personnel, often a probation officer. Frequently separate policies govern diversion policies apart from decisions made by prosecutors, judges, probation officers, and youth defendants. A similar analysis could determine the impact of diversion policies on racial/ethnic rates of contact with the juvenile justice system and their relationship with defense counsel policies. This would entail a qualitative analysis of the diversion policies and would provide additional information on the diversion of youth out of the juvenile justice system.

Further, an underlying assumption in this study that the state policies align with the practices implemented by courts, prosecutor offices, and defense attorneys requires more investigation. Although this study favors explicit language in the policies protecting juvenile defense counsel for youth, these policies rely on local practitioners to adhere to them and still leave some room for localized interpretation or implementation. A qualitative study to determine the gaps between the policy as written and the experiences of those involved in the juvenile justice system – youth, practitioners, and families – would provide more insight into the nexus between state policies and racially/ethnically disparate outcomes.

As an exploratory study and one of the few studies transforming qualitative data on state policies into quantitative data for analysis, this study serves as a starting point for future research into foundational inquiries on the administration of juvenile justice. Research in the areas of defense counsel in juvenile court, disproportionate minority contact in the juvenile justice system, and the protections of civil liberties amid state interests and power contribute to a more equitable administration of justice.

## Appendix A

Themes	Points Possible
<b>Right to Counsel</b>	
Timing of Appointment	
** Arrest/Intake	(4) 1
** Pre-petition (detention)	(3) 1
** Petition (detention)	(2) 1
** Petition (trial) (adjudication)	(1) 1
Express Procedural Representation Points (not including postadjudication)	1
Informed of Right to Counsel	1
Status and Delinquency Proceedings	1
Role of Counsel	1
Opportunity to Confer with Counsel	1
Court shall/must (rather than may) appoint & court discretion;	1
Continuance if no representation	1
Interrogation representation	1
Limitation to delinq. representation based on confinement	-2
Conflict of interest with parents	1
Addresses GAL confusion	1
If counsel is GAL, then 0 points for everything	0
<b>Waiver of Counsel</b>	
Silent statute/rule/caselaw or reference to adult waiver means no points at all	0
Parents able to waive = no points at all	0
No right to waive (so always have counsel) receives 4 points but none of the ones below	4
Partial non-waiver (i.e., limitation to waiver through explicit prohibitory language) = 2 points and points below	

Youth read/informed of rights required (must)	1
Read rights and/or waived rights in presence of counsel (if point here, point above also)	1
Informed of rights (through appointment of counsel or reading of right) *at detention hearing*	1
Youth consulted with counsel (not parent or GAL)	1
Counsel investigated facts	1
Youth waives knowingly	1
Youth waives with understanding	1
Youth waives intelligently/comptently	1
Youth waives voluntarily	1
Youth informed of the charges, possible dispositions, possible defenses, knows consequences of charges, consequences of no representation, collateral consequences of adjudication (any of these)	1
Youth expressly waives right to counsel	1
Waiver in writing /signed/on the record	1
Parent, guardian, adult, et al. not allowed to waive right	1
Court verifies waiver made knowingly and voluntarily	1
Court holds hearing on waiver	1
Youth informed of right at other stages of proceeding, even if waived earlier	1
Standby counsel appointed for youth to assist at court	1
<b>Post Adjudication Representation</b>	
Motions/Motion preparation	1
Post-disposition hearings	1
Review of dispositional order	1
Modify disposition order (including change to placement)	1
Modify custody orders	1
Modify probation orders	1



Probation revocation	1
Probation violation	1
On parole/probation	
Seeking parole	1
Parole revocation	1
Parole modification	1
Conditions of Confinement/Placement	
Recommitment	1
Extension of placement/jurisdiction	1
Hearing on aftercare revocation	1
Transfer hearing (waiver of jurisdiction to adult court)	1
Appeals of final order	1
Appeal	1
All proceedings -- not specific to post-disposition = no points at all for entire section, if nothing else stated	
30 days post disposition if motion filed = no points at all for entire section	
ONLY stating appointment continues until court's jurisdiction terminates = no points at all for entire section	
ONLY stating Any proceeding deemed appropriate = no points at all for entire section	
Limitations to above based on financial means or residential/detention placement = one point only for entire section	
All subsequent court hearings in the proceedings = only one point for entire section	
Any/All post-adjudication or review proceeding = 5 points for entire section	
<b>Determination of Indigence</b>	
Presumption of indigence	2
Youth assets considered only	1

Indigency (including finding process) doesn't block/delay representation	1
Fee applied to indigency determination	-1
Absolutely no waiver of counsel = 3 points for whole section	

## Appendix B

Quantitative Analysis for Socioeconomic Variables				
Contact Point	Race/Ethnicity	100% Poverty	Unemployment	Bach Educ
Arrest	White	4.96E-06	-0.0002256	-0.0000999
	Black	-7.16E-07	-4.27E-06	-2.75E-06
	Latino/a	-0.0000169	-0.0000689	-0.0000585
Detention	White	-0.0006253	9.90E-06	-0.0006887
	Black	-0.0000861	-0.0000937	-0.0000525
	Latino/a	-0.000178	-0.0001692	-0.0001448
Diversion	White	-0.0000514	-2.75E-04	-0.0005036
	Black	-0.0000131	-0.0000669	-0.0000666
	Latino/a	-0.0000189	-0.0000917	-0.0001663
Petition	White	-0.0000444	0.0000337	-0.0001134
	Black	-9.29E-06	-0.0000211	0.0000134
	Latino/a	-0.0000271	-0.0000533	0.0000166
Delinquency Finding	White	-0.000099	-0.0000522	-0.0002773
	Black	-0.0000112	-0.0000372	-0.000015
	Latino/a	-0.0000269	-0.0000522	-0.0000406
Confinement	White	-0.0019923	0.0022509	-0.000176
	Black	0.0012148	0.0125504	-0.0007163
	Latino/a	-0.0003473	0.0005775	0.0002076
Probation	White	-0.0002685	-0.0000609	-0.0007395
	Black	-0.0000327	-0.0000396	-0.0000699
	Latino/a	-0.0001396	-0.0001253	-0.0001947
	*=.05			
	**=.01			

No statistically significant findings

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